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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0421; Directorate Identifier 2012–NM–042–AD; Amendment 39–17284; AD 2012–25–03]

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 757 airplanes. This AD was prompted by a report of in-flight fracture of the right windshield (window 1) on the flight deck and multiple reports of electrical arcs at the terminal blocks of the flight deck windshields resulting in smoke and fire. This AD requires repetitive inspections of electrical heat terminals on the left and right windshields for damage, and corrective actions if necessary. This AD allows replacing an affected windshield with a windshield equipped with different electrical connections, which would terminate the repetitive inspections for that windshield. We are issuing this AD to prevent smoke and fire in the flight deck, which can lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

DATES: This AD is effective January 16, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 16, 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: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@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 April 25, 2012 (77 FR 24643). That NPRM proposed to require repetitive inspections of electrical heat terminals on the left and right windshields for damage, and corrective actions if necessary. That NPRM also proposed to allow replacing an affected windshield with a windshield equipped with different electrical connections, which would terminate the repetitive inspections for that windshield.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 24643, April 25, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 24643, April 25, 2012)

The Air Line Pilots Association, International stated that the proposed actions will enhance safety, and that it supports the intent and language of the NPRM (77 FR 24643, April 25, 2012).

UPS stated that it agrees with the intent of the NPRM (77 FR 24643, April 25, 2012).

Requests To Issue Supersedure AD or Withdraw NPRM (77 FR 24643, April 25, 2012)

FedEx and UPS recommended superseding AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), to add the additional inspection requirements described in Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011, instead of issuing a new AD that would require accomplishing the actions proposed in the NPRM (77 FR 24643, April 25, 2012). FedEx stated that issuing this new AD will impose an additional burden on the operators. UPS stated that the addition of new requirements for the J5 terminal in the NPRM conflicts with the requirements of AD 2010–15–01. UPS stated that issuing a superseding AD would ease tracking and avoid conflicting requirements.

United Airlines (United) stated that an additional inspection is not warranted and that more issues are likely to arise by disturbing the terminals. We infer that United is requesting that we withdraw the NPRM (77 FR 24643, April 25, 2012).

We do not agree with the commenters' requests. The additional inspection requirements of this AD apply only to Model 757 airplanes; and AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), applies to Model 757, 767, and 777 airplanes. Superseding AD 2010–15–01 would delay accomplishment of the actions required by this AD, which would be inappropriate in light of the unsafe condition identified on the J1 and J4 upper windshield electrical power terminal connections on Model 757 airplanes.

In regard to United's comment, the unsafe condition identified in the J1 and J4 upper windshield electrical power terminal connections significantly

outweighs the potential for an operator to inadvertently create a new problem during the accomplishment of the actions required by this AD.

As for UPS's concern about conflicting J5 terminal requirements between AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), and this AD, we point out that accomplishing the actions required by this AD terminates the requirements of AD 2010–15–01 for Model 757 airplanes only. Paragraphs (h) and (l) of this AD provide further clarification regarding this issue.

We have not changed the AD in this regard.

Request To Include Additional Airplane Model in This AD

The National Transportation Safety Board (NTSB) requested that the NPRM (77 FR 24643, April 25, 2012) also apply to Model 747, 767, and 777 airplanes, because a similar window design is used on these models, as stated in NTSB Safety Recommendation A–07–50, dated September 4, 2007. (See *http://www.ntsb.gov/doclib/recletters/2007/A07_49_50.pdf.*).

In addition, the NTSB stated that AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), was applicable to certain Model 757, 767, and 777 airplanes—not just Model 757 airplanes. The NTSB noted that there is another AD action similar to AD 2010–15–01 for Model 747 airplanes.

We disagree to add Model 747, 767, and 777 airplanes to the applicability of this AD. AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), which is applicable to certain Model 757, 767, and 777 airplanes, addresses an unsafe condition on the lower windshield terminals. There were four reported Model 757 windshield upper terminal overheat/arcing events. We have not received any reports of upper terminal overheat/arcing events on Model 767 and 777 airplane windshields, and only one reported upper terminal overheat/arcing event on a Model 747 airplane windshield. Boeing increased the specified torque for installation of the windshield terminals for Model 747, 767, and 777 airplanes and communicated this information to operators. Due to the number of reported events on Model 757 airplanes and the lower specified torque for windshield installations on Model 757 airplanes, this AD is applicable to that model only. We have not changed the AD in this regard.

Requests To Improve Inspection Procedures

American Airlines (AAL) and the NTSB requested that we revise the NPRM (77 FR 24643, April 25, 2012) to provide instructions for more effective inspections in detecting and correcting all failure modes of the windshield electrical terminal connections.

AAL stated that it is concerned that the NPRM (77 FR 24643, April 25, 2012) does not offer a comprehensive solution to flight deck window heat smoke events, and that inspection of the J1, J4, and J5 electrical terminals for loose connections might not prevent electrical arcs at the windshield side of the terminal blocks. AAL stated that its analysis and service history have shown that damage of the solder joints inside the windshield terminal blocks are the primary root cause of the smoke and odor events in the flight deck window heat system. AAL stated that the NPRM should also address the electrical connections at the windshield side of the terminal block, specifically the use of unclenched, low temperature solder joints connecting the braid wire to the terminal block.

The NTSB stated that it agrees that windshield heat system terminal blocks J1 and J4 should be added to the NPRM (77 FR 24643, April 25, 2012), but that the FAA needs to revise the NPRM to ensure that the inspections are effective in detecting and correcting the potential problem involving loose electrical connections. The NTSB cited two serious incidents that it investigated during 2010, which involved in-flight fires and electrical odors that the actions required in AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010) (which requires inspection of terminal block J5) did not adequately address.

We partially agree. We agree with AAL that the required inspection would not detect arcing events in the solder joints inside the terminal blocks of the PPG Aerospace (PPG) windshields. However, we disagree with AAL's suggestion to revise this AD to address the solder joints connecting the braid wire to the terminal block inside the windshield; this is not feasible, as there are currently no non-destructive inspection methods developed to detect and correct damage inside the windshield terminal block. Electrical current through a loose electrical connector will generate heat which can compromise the adjacent solder joint. The requirements of paragraphs (g), (h), and (i) of this AD focus on proper connection of screw/lug connectors, which will protect against smoke/fire events at the connector and damage to the adjacent solder joint.

We disagree with the NTSB that the inspections required by this AD are not effective. We point out that the screw/lug-type connection is partially exposed to flight deck activities and can be bumped during cleaning of the windshield or by any clipboards/books or other articles placed on the glare shield. Therefore, while the inspections required by AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), and this new AD might not eliminate all occurrences of terminal overheat/arcing, they should reduce the likelihood of events as demonstrated since the issuance of AD 2010–15–01.

The most straightforward way to eliminate overheat/arcing events, and to terminate the detailed inspections required by this AD, is replacing the screw/lug-type windshields with windshields having pin/socket-type power connections. This option is specified in paragraph (k) of this AD. However, we also consider a properly installed screw/lug connector to provide an adequate conductive path to prevent overheating of the electrical connection. This is addressed in the requirements of paragraphs (g), (h), and (i) of this AD. In addition, if we were to add a requirement that operators must do that replacement, we would need to issue a supplemental NPRM, and therefore, would delay issuance of the final rule. To delay this final rule would be inappropriate, since we have determined that an unsafe condition exists and the actions required by this AD adequately address the identified unsafe condition. We have not changed the AD in this regard.

Requests for Additional Terminating Action

Boeing requested that GKN Aerospace (GKN) windshields having part numbers (P/Ns) 141T4800–15 and 141T4800–16 (with pin/socket terminals) be approved as optional parts for the terminating action specified in paragraph (k) of the NPRM (77 FR 24643, April 25, 2012).

We agree with the commenter's request, because we have approved alternative methods of compliance (AMOCs) for paragraphs (f), (g), (h), and (i) of AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), to allow installation of GKN windshields having P/Ns 141T4800–15 and 141T4800–16 for Model 757 airplanes only.

We have added new paragraphs (n)(3) and (n)(4) to this AD, which state that AMOCs approved previously in accordance with AD 2010–15–01 are approved as AMOCs for the actions

specified in paragraphs (g), (h), (i), (j), and (k) of this AD.

In addition, AAL stated that installation of a GKN flight deck windshield having P/N 141T4800 should be included as a terminating action to the inspection requirements stated in the NPRM (77 FR 24643, April 25, 2012). AAL stated that the P/N 141T4800 window does not incorporate the solder joint, which causes an extreme arcing ignition source and possible glass damage.

We partially agree. We agree with AAL that damaged solder joints are a cause of electrical arcs, because the heat caused by a loose terminal exceeds the rated melting point of the solder, which could result in high voltage arcing that might damage the windshield glass. We disagree with AAL to include all GKN windshields having P/N 141T4800 as terminating action for this AD because some of these have screw/lug heat terminals and some have pin/socket heat terminals. A main cause of an overheated terminal, and resultant melting of the solder and subsequent arcing, is a loose, cross-threaded, or incorrectly installed screw. Since we have received reports of arcing/smoking on GKN windshields having P/N 141T4800 with screw/lug heat terminals, we have determined that these windshields do not provide an acceptable level of safety without accomplishing the repetitive inspections required by this AD and cannot be included as a terminating action for this AD. Windshields with pin/socket heat terminals are terminating action as specified in paragraphs (k) and (n)(4) of this AD. We have not changed the AD in this regard.

Request To Change the Compliance Time

FedEx recommended retaining the 500-flight-hour or 150-day compliance time, whichever occurs first, as specified in Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011, for certain inspections, in lieu of the 500 flight hours proposed by the NPRM (77 FR 24643, April 25, 2012). FedEx stated that some airplanes have a low average utilization rate (3.3 or less flight hours per day) and it is possible to reach 150 days before 500 flight hours.

We do not agree to change the compliance time. We have determined that the 150-day compliance time is too restrictive, and a compliance time of 500 flight hours for the initial and certain other inspections addresses the identified unsafe condition soon enough to ensure an adequate level of safety. As we noted in the NPRM (77 FR 24643, April 25, 2012), this difference between Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011, and this AD was coordinated with Boeing. We have not changed the AD in this regard.

Request To Change Repetitive Inspection Interval

FedEx recommended having one repetitive inspection interval for both GKN and PPG windows. FedEx recommended a repetitive inspection interval of 6,000 flight hours or 24 months, whichever occurs first. FedEx stated that this will help operators manage the repetitive inspection interval without the need to require maintenance ''to check on the manufacturer of the windows and/or part numbers.''

We disagree with having the same repetitive inspection interval for both GKN and PPG windows. Having this one inspection interval would reduce the repetitive inspection interval for the GKN-manufactured windshields from 12,000 flight hours or 48 months, to 6,000 flight hours or 24 months, whichever occurs later. The reason for the longer repetitive inspection interval for the GKN windshields is that the frequency of overheat/arcing events on the GKN windshields with screw/lug-type electrical connections is significantly lower and the effects are not as severe as those of the PPG windshields. FedEx may choose to inspect all its airplanes at the more restrictive interval, if desired, to simplify its maintenance program. We have not changed the AD in this regard.

Requests To Change the Replacement Window Inspection Requirements

FedEx and UPS requested we delete the requirements of paragraph (i) of the NPRM (77 FR 24643, April 25, 2012). In eliminating paragraph (i) from the NPRM, FedEx also suggested that we change the repetitive inspection intervals specified in paragraphs (g)(1) and (g)(2) of the NPRM to ''every 500 flight hours'' (reduced from 6,000 or 12,000 flight hours, as proposed) or 150 days (reduced from 24 or 48 months, as proposed), whichever comes first, to address the unsafe condition. FedEx and UPS stated that it is difficult for the operators to meet the requirements of paragraph (i) of the NPRM, especially if the windshield is removed due to pilot and/or maintenance write-ups and/or non-routine findings during operation.

We do not agree to remove paragraph (i) of the AD, or to change the repetitive inspection intervals of paragraphs (g)(1) and (g)(2) of the NPRM (77 FR 24643, April 25, 2012). However, we have revised paragraph (i) of this AD to limit the inspection to windshields that are replaced and connections that are re-assembled in accordance with the requirements of this AD. The current Boeing Model 757 airplane maintenance manual (AMM) provides instructions for tasks associated with the windshield heating system, including replacement of a windshield with another windshield with screw/lug electrical connectors and for testing of the window heater element loop resistance. These tasks specify the correct torque for assembly of the windshield electrical terminal connections. We find that re-inspecting windshields after replacement or disassembly as part of routine maintenance is not necessary since the AMM specifies the proper torque.

We have revised (and reformatted) paragraph (i) of this AD to clarify that the inspections are done on windshields replaced or connections re-assembled in accordance with the service information specified in this AD. Therefore, this AD only requires re-inspection of windshield terminal installations on airplanes on which corrective actions required by this AD must be done.

Request for Clarification of Re-Assembly

UPS questioned whether popping off the plastic cover on the Wallace-Black and Cory/Tri-Star lug connectors to gain access for visual inspection is a ''re-assembly'' when the cover is popped back on. UPS stated that if it is a re-assembly, then another re-inspection is required at 500 flight hours, which starts a repetitive inspection loop that cannot be terminated. UPS stated that the only conceivable reason for ''re-assembling'' any J1, J4, or J5 connection would be for a finding of an improper assembly (i.e., cross-threading, gapping, low screw torque, loose screw), and that these issues have been adequately addressed in AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), and in the previous inspections of the NPRM (77 FR 24643, April 25, 2012).

We agree to provide clarification. Removing and installing the cover, as described in Figure 1 and Figure 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 15, 2011, is not considered ''re-assembly'' for the requirements specified in paragraph (i) of this AD. We have not changed the AD in this regard.

Request To Revise the AMM

UPS requested that the Boeing AMM be revised to include the re-inspection

requirements of paragraph (i) of the NPRM (77 FR 24643, April 25, 2012), or that a requirement similar to a critical design configuration control limitation/airworthiness limitation (CDCCL/AWL) be added to the appropriate AMM section. UPS stated that the re-inspection requirements in paragraph (i) of the NPRM include unscheduled maintenance activities, and UPS, like other operators, has no means to identify and impose a required re-inspection when the re-inspection is not in the instructions for continued airworthiness (ICAs), namely, the AMM. UPS stated that having the operator change its manual to include a ''unique'' requirement is not a viable solution.

We disagree with the request. However, as previously stated, we have removed the requirement to inspect windows replaced during normal maintenance. We find that the safety of the fleet of affected airplanes will be ensured by the revised requirements of paragraph (i) of this AD. In addition, if we were to add a requirement to include a CDCCL or AWL in the maintenance program instead of the inspection specified in paragraph (i) of this AD, we would need to issue a supplemental NPRM, and therefore, would delay issuance of the final rule. To delay this final rule would be inappropriate, since we have determined that an unsafe condition exists and the actions required by this AD, including the inspections specified in paragraph (i) of this AD, must be conducted to ensure continued safety. We have not changed the AD in this regard.

Request for Temporary Repair for Missing Terminal Covers

UPS requested approval to operate with missing plastic protective terminal covers on the lug-screw-style connectors. UPS stated that, with the increased amount of inspection activity required on these terminals, it is common for the plastic protective covers to be missing. UPS stated that Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 15, 2011, specifies the inspection of these covers for signs of heat damage. UPS stated that there is no provision for a missing cover. UPS requested that provisions be made for dispatching an airplane with a simple temporary repair for those instances when a cover is missing; since failure to resolve this minor point will result in grounded airplanes for the sake of an inexpensive cover.

We partially agree. We disagree with granting approval to operate with missing plastic protective terminal covers on the lug-screw-style connectors in this AD. We agree that the availability of an alternative to seal the windshield terminal(s) would provide relief if the type design part is missing from the terminal and it is not readily available at the time it is needed. According to Boeing, the use of Dow Corning RTV–3145 sealant, also called DC–3145 potting compound, would be acceptable to use in place of the missing cover. The procedure to apply the DC–3145 sealant is specified in the Boeing Standard Wiring Practices Manual, Chapter 20–60–08. Operators can submit a request for an AMOC, including the specific details of when and how this substitution would be used, in accordance with the procedures specified in paragraph (n) of this AD. We have not changed the AD in this regard.

Additional Changes Made to This AD

We have added new paragraph (c)(3) to this AD to state that installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory-and-Guidance-Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' 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 (n) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 24643, April 25, 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 24643, April 25, 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 664 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 of windshields	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle.	$169,320 per inspection cycle.

We estimate the following costs to do any necessary corrective 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 corrective actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Windshield replacement and changes to related wiring including lug replacement.	9 work-hours × $85 per hour = $765 per windshield.	$19,687 per windshield	$20,452 per windshield.

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):

2012–25–03 The Boeing Company: Amendment 39–17284; Docket No. FAA–2012–0421; Directorate Identifier 2011–NM–042–AD.

(a) Effective Date

This AD is effective January 16, 2013.

(b) Affected ADs

This AD affects AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 757–200, –200PF, and –200CB series airplanes identified in Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011.

(2) Model 757–300 airplanes identified in Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011.

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

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by a report of in-flight fracture of the right windshield (window 1) on the flight deck and multiple reports of electrical arcs at the terminal blocks of the flight deck windshields resulting in smoke and fire. We are issuing this AD to prevent smoke and fire in the flight deck, which can lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

(f) Compliance

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

(g) Inspection and Repair

Within 500 flight hours after the effective date of this AD, except as required by paragraph (h) of this AD: Do a detailed inspection for damage of the wiring and electrical terminal blocks (J1, J4, and J5 terminals) at the left and right flight deck window 1 windshield, and do all applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, -200PF, and -200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes). Except as provided by paragraph (j) of this AD, do all applicable corrective actions before further flight. Repeat the detailed inspection thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD. Doing the replacement specified in paragraph (k) of this AD terminates the repetitive inspection requirements of this paragraph for that replaced flight deck windshield.

(1) For flight deck windshields manufactured by GKN Aerospace (GKN) with screw/lug electrical connections, repeat the detailed inspection thereafter at intervals not to exceed 12,000 flight hours or 48 months, whichever occurs later.

(2) For flight deck windshields manufactured by PPG Aerospace (PPG) with screw/lug electrical connections, repeat the detailed inspection thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later.

(h) Compliance Time Exception for Previous Inspection

For airplanes on which inspections of the J1, J4, and J5 terminals specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 2, dated April 19, 2010 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 2, dated March 31, 2010 (for Model 757–300 series airplanes); were accomplished before the effective date of this AD: Do the actions required by paragraph (g) of this AD at the applicable compliance time specified in paragraphs (h)(1) and (h)(2) of this AD. Repeat the inspection thereafter at the applicable intervals specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For flight deck windshields manufactured by GKN with screw/lug electrical connections: At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Within 12,000 flight hours or 48 months, whichever occurs later, after accomplishing the inspection.

(ii) Within 500 flight hours after the effective date of this AD.

(2) For flight deck windshields manufactured by PPG with screw/lug electrical connections: At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Within 6,000 flight hours or 24 months, whichever occurs later, after accomplishing the inspection.

(ii) Within 500 flight hours after the effective date of this AD.

(i) Inspection for Replaced Windshield or Re-Assembled Heat Power Connection

(1) For airplanes on which any windshield is replaced after the effective date of this AD

with a windshield that uses screws and lugs for electrical heat connection, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes): Do the actions required by paragraph (g) of this AD within 500 flight hours after the windshield replacement; and thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD.

(2) For airplanes on which any windshield heat power connection is re-assembled after the effective date of this AD on windshields that use screws and lugs for windshield heat connections, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes): Do the actions required by paragraph (g) of this AD within 500 flight hours after the connection re-assembly; and thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD.

(j) Exception to Compliance Time for Certain Windshield Replacement

If, during the inspection required by paragraph (g) or (i) of this AD, the screw is found cross threaded: Do the applicable actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) If the terminal lug is loose and cannot be tightened: Before further flight, replace that windshield, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes).

(2) If the terminal lug is tight or can be tightened: Replace that windshield within 500 flight hours after the inspection, in accordance with the Accomplishment Instructions Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes).

(k) Optional Terminating Action

Replacing a flight deck windshield that uses screws and lugs for the electrical connections with a flight deck windshield that uses pins and sockets for the electrical connections, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011 (for Model 757–300 series airplanes); ends the repetitive inspection requirements of paragraph (g) of this AD for that windshield.

(l) Related AD Termination

Accomplishing the actions required by this AD terminates the requirements of paragraphs (g), (j), and (k) of AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), for that airplane only.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–30–0019, Revision 2, dated April 19, 2010 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Special Attention Service Bulletin 757–30–0020, Revision 2, dated March 31, 2010 (for Model 757–300 series airplanes); which are not incorporated by reference in this AD.

(n) 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) AMOCs approved previously in accordance with AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), that are associated with the J5 (lower) terminal only are approved as AMOCs for the actions specified in paragraphs (g), (h), (i), (j), and (k) of this AD for the J5 (lower) terminal only.

(4) AMOCs approved previously in accordance with AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), that install windows with pin/socket electrical connectors (both upper and lower) are approved as AMOCs for the actions specified in paragraphs (g), (h), (i), (j), and (k) of this AD.

(o) Related Information

(1) For more information about this AD, contact Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *Elias.Natsiopoulos@faa.gov.*

(2) For Boeing 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.

(p) 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 Special Attention Service Bulletin 757–30–0019, Revision 3, dated December 16, 2011.

(ii) Boeing Special Attention Service Bulletin 757–30–0020, Revision 3, dated December 16, 2011.

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

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

(5) You may 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 30, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29714 Filed 12–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0496; Directorate Identifier 2011–NM–263–AD; Amendment 39–17283; AD 2012–25–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD currently requires revising the airworthiness limitations section (AWL) of the Instructions for Continued Airworthiness (ICA) of the Canadair Regional Jet Maintenance Requirements Manual (MRM) by incorporating new procedures for repetitive detailed and special detailed inspections for cracking of the aft pressure bulkhead. This new AD requires revising the maintenance program to incorporate a revised task specified in a certain temporary revision, which requires an improved non-destructive inspection procedure; and adds airplanes to the applicability. This AD was prompted by multiple reports of cracks on the forward face of the rear pressure bulkhead (RPB) web. We are issuing this AD to detect and correct cracking in the RPB, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: This AD becomes effective January 16, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 29, 2005 (70 FR 69073, November 14, 2005).

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 1, 2012 (77 FR 32439), and proposed to supersede AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005). That NPRM proposed to correct an unsafe condition for the specified products. Transport Canada Civil Aviation (TCCA) Mandatory Continuing Airworthiness Information (MCAI) states:

> Cracks on the forward face of the Rear Pressure Bulkhead (RPB) web have been discovered on three CL–600–2B19 aeroplanes in-service. This indicates that the existing inspection requirements of Airworthiness Limitation (AWL) task 53–61–153 mandated by [TCCA] AD CF–2005–13R1 are not adequate. Failure of the RPB could result in rapid decompression of the aeroplane.
>
> A Temporary Revision (TR) has been made to Part 2 of the Maintenance Requirements Manual (MRM) to revise the existing AWL task by introducing an improved Non-Destructive Inspection (NDI) procedure to ensure that fatigue cracking of the RPB is detected and corrected.
>
> This [TCCA] directive mandates the incorporation of a new NDI procedure for AWL task number 53–61–153.

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 have considered the comments received.

Request To Remove Certain Paragraphs of the NPRM (77 FR 32439, June 1, 2012)

Air Wisconsin requested that we remove paragraphs (g) and (h) from the NPRM (77 FR 32439, June 1, 2012) because paragraph (i) of the NPRM supersedes those paragraphs. Air Wisconsin stated several examples of how paragraphs (g) and (h) are superseded by paragraph (i) of the NPRM.

We disagree with the commenter's request to remove paragraphs (g) and (h) from this final rule. We find it necessary to restate those paragraphs in this final rule to ensure the existing inspections are done until the required maintenance program revision specified in paragraph (i) of this AD is accomplished. In addition, if an airplane is imported into the United States, it is necessary to accomplish the requirements of paragraph (g) of this AD before the airplane may be operated in this country.

However, we find that clarification of paragraph (i) of this AD is necessary. Once the maintenance program revision is accomplished, the restated requirements of paragraph (g) of this AD are terminated. Therefore, we have revised the last sentence of paragraph (i) of this AD to specify that doing the revision required by paragraph (i) of this AD terminates the requirements of paragraph (g) of this AD.

In addition, we have retained paragraph (h) in this final rule because it is necessary to allow Canadair Regional Jet Temporary Revision TR 2B–2109, dated October 13, 2005, to be removed from the maintenance requirements manual once a general revision is done. Further, we have determined that it is necessary to add a paragraph similar to paragraph (h) of this AD to allow removal of the temporary revision specified in paragraph (i) of this AD. Accordingly, we have revised this final rule to add new paragraph (k) to this AD to specify that information. Subsequent paragraphs have been reidentified.

Request To Revise Serial Numbers

Air Wisconsin requested that we correct the serial numbers in paragraph (c) or (g) of the NPRM (77 FR 32439, June 1, 2012) for consistency.

We disagree with the request. The serial numbers specified in paragraph (g) of this AD are only those that were part of the applicability of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005). Paragraph (c) of this AD lists all serial numbers that are affected by this new AD.

Requests To Clarify Compliance Time

In regard to paragraph (i)(2) of the NPRM (77 FR 32439, June 1, 2012), Air Wisconsin requested we clarify that, if the last inspection performed met the requirements of AWL 53–61–153 specified in Bombardier TR 2B–2187, dated June 22, 2011, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM, the next inspection cycle as specified in that TR is acceptable provided that interval is not greater than that specified in Bombardier TR 2B–2187, dated June 22, 2011.

In addition, Comair requested that we provide credit for paragraph (i) of the NPRM (77 FR 32439, June 1, 2012) for operators that performed previous inspections using the special detailed inspection option specified in AWL 53–61–153 of the Canadair Regional Jet TR 2B–2109, dated October 13, 2005, to Appendix B, ''Airworthiness Limitations,'' of Part 2 of the Canadair Regional Jet MRM. Comair stated that it requested this credit so that operators would not be subject to the initial compliance time specified in paragraph (i)(1) or (i)(2) of the NPRM (77 FR 32439, June 1, 2012).

We agree to clarify the inspection compliance time. We agree that, if the last special detailed inspection (not the detailed visual inspection) performed met the requirements of AWL 53–61–153 specified in Bombardier TR 2B–2187, dated June 22, 2011; or Canadair Regional Jet TR 2B–2109, dated October

13, 2005; to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM; the next inspection should be at the next compliance time specified in AWL 53–61–153 of Bombardier TR 2B–2187, dated June 22, 2011 (i.e., within 4,360 landings since the last inspection). We have changed paragraph (i) of this AD to state that for airplanes that have already complied with AWL 53–61–153 of Bombardier TR 2B–2187, dated June 22, 2011, or the special detailed inspection option specified in Canadair Regional Jet TR 2B–2109, dated October 13, 2005, the initial compliance time for AWL 53–61–153 is within 4,360 flight cycles after accomplishing the most recent special detailed inspection, or within 1,500 flight cycles after accomplishing the most recent detailed inspection as specified in AWL 53–61–153 of Canadair Regional Jet TR 2B–2109, dated October 13, 2005, whichever occurs later.

Request To Approve Previous Alternative Methods of Compliance (AMOC)

Air Wisconsin requested that a statement be added to paragraph (k) of the NPRM (77 FR 32439, June 1, 2012) approving use of existing AMOCs that were approved previously in accordance with AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005).

We agree to allow existing AMOCs approved in accordance with AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005), as AMOCs for the corresponding requirements of paragraphs (g) and (h) of this AD only. We have revised paragraph (l)(1) of this AD (referred to as paragraph (k)(1) of the NPRM (77 FR 32439, June 1, 2012)) accordingly.

Request To Remove Reference to a Certain TR

Air Wisconsin requested that we remove the reference to Canadair Regional Jet TR 2B–2109, dated October 13, 2005, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM from paragraph (j) of the NPRM (77 FR 32439, June 1, 2012). Air Wisconsin noted that Canadair Regional Jet TR 2B–2109, dated October 13, 2005, conflicts with Bombardier TR 2B–2187, dated June 22, 2011, and stated that Bombardier TR 2B–2187, dated June 22, 2011, specifically removed the ''visual inspection'' option that was in Canadair Regional Jet TR 2B–2109, dated October 13, 2005.

We agree with the request for the reasons stated by the commenter. We have removed the reference to Canadair Regional Jet TR 2B–2109, dated October 13, 2005, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM, from paragraph (j) of this AD. Paragraph (i) of this AD requires that the maintenance program be revised to incorporate Bombardier TR 2B–2187, dated June 22, 2011. Paragraph (i) of this AD also specifies that once the revision is done, the requirements of paragraph (g) of this AD are terminated (paragraph (g) of the AD incorporated Bombardier TR 2B–2109, dated October 13, 2005).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 32439, June 1, 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 32439, June 1, 2012).

Costs of Compliance

We estimate that this AD will affect about 586 products of U.S. registry.

The actions that are required by AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $49,810, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 32439, June 1, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005), and adding the following new AD:

2012–25–02 Bombardier, Inc.: Amendment 39–17283. Docket No. FAA–2012–0496; Directorate Identifier 2011–NM–263–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 16, 2013.

(b) Affected ADs

This AD supersedes AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005).

(c) Applicability

(1) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

(2) This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in FAA Advisory Circular (AC) 25.1529–1A, dated November 20, 2007 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/list/AC%2025.1529-1A/$FILE/AC%2025.1529-1A.pdf*).

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by multiple reports of cracks on the forward face of the rear pressure bulkhead (RPB) web. We are issuing this AD to detect and correct cracking in the RPB, which could result in reduced structural integrity and rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Revision to the Airworthiness Limitations (AWL) Section

This paragraph restates the requirements of paragraph (f) of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005). For airplanes having serial numbers 7003 through 8025 inclusive, 8030, and 8034: Within 30 days after November 29, 2005 (the effective date of AD 2005–23–01), revise the AWL section of the Instructions for Continued Airworthiness of the Canadair Regional Jet Maintenance Requirements Manual (MRM), Part 2, Appendix B, ''Airworthiness Limitations,'' by incorporating the information specified in AWL 53–61–153 of the Canadair Regional Jet Temporary Revision (TR) 2B–2109, dated October 13, 2005, into the AWL section. Perform the applicable detailed and special detailed inspections for cracking of the aft pressure bulkhead, as specified in that TR, at the applicable compliance time specified in table 1 to paragraph (g) of this AD. Repeat the detailed inspection thereafter at intervals not to exceed 1,085 flight cycles, and repeat the special detailed inspection thereafter at intervals not to exceed 4,360 flight cycles, in accordance with the procedures specified in AWL 53–61–153, as introduced by Canadair Regional Jet TR 2B–2109, dated October 13, 2005, to Appendix B, ''Airworthiness Limitations, of Part 2 of the Canadair Regional Jet MRM. Accomplishing the revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—COMPLIANCE TIMES FOR INITIAL INSPECTIONS

As of November 29, 2005 (the effective date of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005)): If the total flight cycles accumulated on the airplane are—	Inspect before the airplane accumulates—
8,000 or fewer	12,000 total flight cycles.
More than 8,000 but fewer than 12,000	15,000 total flight cycles or within 4,000 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005)), whichever is first.
12,000 or more but fewer than 15,000	17,000 total flight cycles or within 3,000 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01 Amendment 39–14359 (70 FR 69073, November 14, 2005)), whichever is first.
15,000 or more but fewer than 17,000	18,500 total flight cycles or within 2,000 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01 Amendment 39–14359 (70 FR 69073, November 14, 2005)), whichever is first.
17,000 or more but fewer than 18,500	19,500 total flight cycles or within 1,500 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005)), whichever is first.
18,500 or more but fewer than 19,500	20,000 total flight cycles or within 1,000 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005)), whichever is first.
19,500 or more	500 flight cycles after November 29, 2005 (the effective date of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005)).

(h) Retained General Revision of the MRM

This paragraph restates the requirements of paragraph (g) of AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005). For airplanes having serial numbers 7003 through 8025 inclusive, 8030, and 8034: When the information in AWL 53–61–153 of the Canadair Regional Jet TR 2B–2109, dated October 13, 2005, to Appendix B, ''Airworthiness Limitations,'' of Part 2 of the Canadair Regional Jet MRM, is included in the general revisions of the MRM, the general revisions may be inserted into the AWL section of the Instructions for Continued Airworthiness, and this information may be removed from the MRM.

(i) New Requirement of This AD: Maintenance Program Revision

Within 60 days after the effective date of this AD: Revise the maintenance program by incorporating the revised inspection requirements specified in AWL 53–61–153 of Bombardier TR 2B–2187, dated June 22, 2011, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM. The initial compliance times for the task are at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. Doing the revision required by paragraph (i) of this AD terminates the requirements of paragraph (g) of this AD.

(1) For airplanes on which the special detailed inspection specified in AWL 53–61–153 of Bombardier TR 2B–2187, dated June 22, 2011; or Canadair Regional Jet TR 2B–2109, dated October 13, 2005; has not been done as of the effective date of this AD: The initial compliance time for AWL 53–61–153 is at the applicable time specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD.

(i) For airplanes that have accumulated 10,500 total flight cycles or less as of the effective date of this AD: Before the accumulation of 12,000 total flight cycles.

(ii) For airplanes that have accumulated more than 10,500 total flight cycles as of the effective date of this AD: Within 1,500 flight cycles after the effective date of this AD.

(2) For airplanes on which the special detailed inspection specified in AWL 53–61–153 of Bombardier TR 2B–2187, dated June 22, 2011; or Canadair Regional Jet TR 2B–2109, dated October 13, 2005; has been done as of the effective date of this AD: The initial compliance time for AWL 53–61–153 is within 4,360 flight cycles after accomplishing the most recent special detailed inspection, or within 1,500 flight cycles after accomplishing the most recent detailed inspection as specified in AWL 53–61–153 of Canadair Regional Jet TR 2B–2109, dated October 13, 2005, whichever occurs later.

(j) No Alternative Actions or Intervals

After accomplishing the revisions required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals may be used other than those specified in Bombardier TR 2B–2187, dated June 22, 2011, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM, unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (l)(1) of this AD.

(k) New Action of This AD: General Revision of the MRM

The maintenance program revision required by paragraph (i) of this AD may be done by inserting a copy of Bombardier TR 2B–2187, dated June 22, 2011, into Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM. When this TR has been included in general revisions of the MRM, the general revisions may be inserted in the MRM, provided the relevant information in the general revision is identical to that in this TR.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2005–23–01, Amendment 39–14359 (70 FR 69073, November 14, 2005), are approved as AMOCs with the corresponding requirements of paragraphs (g) and (h) of this AD only.

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

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 16, 2013.

(i) Bombardier TR 2B–2187, dated June 22, 2011, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier CL–600–2B19 MRM.

(ii) Reserved.

(4) The following service information was approved for IBR on November 29, 2005 (70 FR 69073, November 14, 2005).

(i) Canadair Regional Jet Temporary Revision 2B–2109, dated October 13, 2005, to the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations.''

(ii) Reserved.

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

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

(7) You may 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 30, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29708 Filed 12–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0501; Directorate Identifier 2009–SW–083–AD; Amendment 39–17258; AD 2012–23–02]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E and Model A109S helicopters with certain lower semichannel assemblies installed. This AD requires a one-time inspection of the lower semichannel assemblies to determine if metallic spacers are installed. If the metallic spacers are installed, this AD requires an inspection for the correct installation of the metallic spacers on the semichannels and for the correct seating of the gaskets. If the metallic spacers are not installed with rivets, the lower semichannel assemblies must be modified, and the main drive shaft must be inspected for damage. This AD was prompted by reports of damage to the main drive shaft caused by improperly secured metallic spacers on some A109 model helicopters. The actions of this AD are intended to detect missing spacer rivets, which could allow the metallic spacers to rotate and lead to damage and failure of the main drive shaft, and subsequent loss of helicopter control.

DATES: This AD is effective January 16, 2013.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 16, 2013.

ADDRESSES: For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Manager, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *jim.grigg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 22, 2012, at 77 FR 30234, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Model A109E helicopters, up to and including serial number (S/N) 11694, except 11633 and 11634; and Model A109S helicopters, up to and including S/N 22034, except 22026 and 22033; with lower semichannel assemblies, part number (P/N)109–0641–10–213 or 109–0642–01–171, installed. That NPRM proposed to require a one-time inspection of the lower semichannel assemblies to determine if metallic spacers are installed. If the metallic spacers are installed, the AD proposed to require an inspection for the correct installation of the metallic spacers and correct seating of the gaskets. If the metallic spacers are installed without rivets, the AD proposed to require modification of the lower semichannel assemblies and inspection of the main drive shaft for damage. The proposed requirements were intended to detect missing spacer rivets, which could allow the metallic spacers to rotate and lead to damage and failure of the main drive shaft, and subsequent loss of helicopter control.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD No. 2007–0192–E, dated July 13, 2007 (EAD 2007–0192–E), to correct an unsafe condition for certain serial-numbered Agusta Model A109E, A109S, and A109LUH helicopters with lower semichannel assemblies, P/N 109–0641–10–213 or 109–0642–01–171, installed. EASA advises that some cases of interference between the metallic spacer, P/N 109–0642–01–195, and the main drive shaft, P/N 109–0415–06–103, have been detected on the Model A109LUH helicopter, a military version of the Model A109 helicopter that is not type certificated in the U.S., and that this interference has damaged the main drive shaft. EASA advises that this condition, if not corrected, could lead to failure of the main drive shaft ''with significant effects on the safety of the helicopter.''

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (77 FR 30234, May 22, 2012).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

This AD differs from the EASA AD as follows:

- This AD is not applicable to A109LUH model helicopters because they are not type certificated for use in the United States;
- This AD does not require compliance ''not later than September 30, 2007'' because that date has passed;
- This AD uses the term ''hours time-in-service'' rather than ''flight hours'' when referring to compliance times; and
- This AD does not contain the steps necessary to install the main drive shaft.

Related Service Information

Agusta has issued Mandatory Alert Bollettino Tecnico No. 109EP–79, dated July 12, 2007 (BT 109EP–79), which applies to certain S/Ns of the model A109E helicopter, and Mandatory Alert Bollettino Tecnico No. 109S–15, dated July 12, 2007 (BT 109S–15), which applies to certain S/Ns of the model A109S helicopter. Both BT 109EP–79 and BT 109S–15 specify performing an inspection on the left side and right side lower semichannel assemblies to determine if metallic spacers are installed. If the metallic spacers are installed, BT 109EP–79 and BT 109S–15 specify inspecting the metallic spacers for correct installation, inspecting the gaskets for correct seating, modifying the semichannel assemblies by installing missing rivets, and inspecting the main drive shaft for damage if the metallic spacers are installed without rivets.

Costs of Compliance

We estimate that this AD will affect about 90 helicopters of U.S. registry. We also estimate an average labor rate of $85 per work hour. Based on these assessments, we calculate the following costs:

- Inspecting the lower semichannel assembly for metallic spacers will take about 15 minutes for a labor cost of $21 per helicopter. No parts will be needed, so the total cost for the 90-helicopter fleet will be $1,890.
- Inspecting for missing rivets will take about three work-hours for a total labor cost of $255 per helicopter. Parts will cost $10, increasing the per-helicopter cost to $265.
- Removing, inspecting for damage, and reinstalling the main drive shaft will take four work-hours for a labor cost of $340. No parts will be required.
- Replacing the main drive shaft. This task also will take four work-hours, so that labor costs will again total $340. Parts will cost $20,824 for a total per-helicopter cost of $21,164.

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 helicopters 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 to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–02 Agusta S.p.A.: Amendment 39–17258; Docket No. FAA–2012–0501; Directorate Identifier 2009–SW–083–AD.

(a) Applicability

This AD applies to Model A109E helicopters, up to and including serial number (S/N) 11694, except 11633 and 11634; and Model A109S helicopters, up to and including S/N 22034, except S/N 22026 and 22033; with lower semichannel assemblies, part number (P/N) 109–0641–10–213 or 109–0642–01–171, installed; certificated in any category.

Note to paragraph (a) of this AD: The lower semichannel assemblies are sub-components of the forward firewall assembly.

(b) Unsafe Condition

This AD defines the unsafe condition as missing spacer rivets, which could allow the metallic spacers to rotate and lead to damage and failure of the main drive shaft, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 16, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 50 hours time-in-service:

(1) Inspect the left-side and right-side lower semichannel assemblies by referring to Figures 1 and 2, and in accordance with Paragraph 3. of the Compliance Instructions in the Agusta Bollettino Tecnico (BT) No. 109EP–79 for the Model A109E helicopter, or BT No. 109S–15 for the Model A109S helicopter, both dated July 12, 2007, to determine if metallic spacers, P/N 109–0642–01–195, are installed. If metallic spacers are not installed, no further actions are required.

(2) For each semichannel assembly with a metallic spacer, remove the semichannel assembly from the helicopter firewall and note whether it is the left-side or right-side semichannel assembly.

(3) Inspect each removed semichannel assembly and determine whether there is a fixing rivet, P/N MS20427M3–5, MS20426T3–5, or A298A04TW02, installed that holds the spacer to the lower semichannel assembly and whether the gasket is properly seated.

(4) For each semichannel assembly without a fixing rivet on each side of the lower semichannel assembly or those where the gasket is improperly seated, separate the lower semichannel from the upper semichannel, noting the orientation of each spacer and gasket. Modify the lower semichannel assembly by installing a fixing rivet on each side of the lower semichannel assembly, and reattaching the lower and upper semichannel assemblies in accordance with paragraphs 4.2 through 4.7 of the appropriate BT for your model helicopter. Paragraph 4.2 of the BT states ''remove the fixing rivets''; this AD changes that provision to ''remove the screws, P/N MS27039–08–05.''

(5) Inspect each main drive shaft for a nick, a scratch, or other damage in the semichannel area. If a nick, a scratch, or other damage is found that exceeds those allowable damage tolerances in the maintenance manual, replace the main drive shaft with an airworthy main drive shaft.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Jim Grigg, Manager, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *jim.grigg@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency Emergency AD No. 2007–0192–E, dated July 13, 2007

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7100, powerplant system.

(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) Agusta Bollettino Tecnico No. 109EP–79, dated July 12, 2007.

(ii) Agusta Bollettino Tecnico No. 109S–15, dated July 12, 2007.

(3) For Agusta S.p.A. service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 Fort Worth, Texas, on November 6, 2012.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–28432 Filed 12–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0678; Directorate Identifier 2011–NM–285–AD; Amendment 39–17280; AD 2012–24–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and –400F series airplanes. This AD was prompted by multiple reports of integrated display unit (IDU) malfunctions and mode control panel (MCP) malfunctions. This AD requires installing new software, replacing the duct assembly with a new duct assembly, making wiring changes, and routing certain wire bundles. We are issuing this AD to prevent IDU malfunctions, which could affect the ability of the flightcrew to read primary displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flightcrew to maintain control of the airplane.

DATES: This AD is effective January 16, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 16, 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: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@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 July 11, 2012 (77 FR 40832). That NPRM proposed to require installing new software, replacing the duct assembly with a new duct assembly, making wiring changes, and routing certain wire bundles.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 40832, July 11, 2012), and the FAA's response to each comment.

Request To Use Unissued Service Information

Boeing requested that we refer to Boeing Alert Service Bulletin 747–21A2523, Revision 2, which has not been issued, instead of Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011, as the appropriate source of service information in the NPRM (77 FR 40832, July 11, 2012). Boeing stated that Boeing Alert Service Bulletin 747–21A2523, Revision 2, describes additional wire changes for Model 747–400 airplanes, and that one additional airplane is added to the effectivity of that service bulletin.

We disagree to refer to Boeing Alert Service Bulletin 747–21A2523, Revision 2, in this AD. That service bulletin has not been issued. Referring to a document that has not been issued violates the **Federal Register** regulations for materials incorporated by reference rules. See 1 CFR 51.1(f). We do not consider that delaying this action until after the release of a planned service bulletin is warranted. Additionally, increasing the AD applicability would require issuing a supplemental NPRM for public comment. We find that delaying this action would be inappropriate in light of the identified unsafe condition. Once Boeing Alert Service Bulletin 747–21A2523, Revision 2, is issued and we have reviewed that service bulletin, we might consider further AD rulemaking. We have not changed this final rule regarding this issue.

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, 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 40832, July 11, 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 40832, July 11, 2012).

Costs of Compliance

We estimate that this AD affects 33 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
Duct assembly and replacement wiring changes.	41 work-hours × $85 per hour = $3,485	$20,121	$23,606	$778,998
Software change	3 work-hours × $85 per hour = $255	0	255	8,415

According to the manufacturer, some 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

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):

2012–24–10 The Boeing Company: Amendment 39–17280; Docket No. FAA–2012–0678; Directorate Identifier 2011–NM–285–AD.

(a) Effective Date

This AD is effective January 16, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by multiple reports of integrated display unit (IDU) malfunctions and mode control panel (MCP) malfunctions. We are issuing this AD to prevent IDU malfunctions, which could affect the ability of the flightcrew to read primary displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flightcrew to maintain control of the airplane.

(f) Compliance

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

(g) Software Update

Within 12 months after the effective date of this AD: Install integrated display system software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

Note 1 to paragraph (g) of this AD: Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011, refers to the service bulletins specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD as additional sources of guidance for the software installation specified by paragraph (g) of this AD, which are not incorporated by reference in this AD.

(1) Boeing Service Bulletin 747–31–2426, dated July 29, 2010 (for airplanes with Rolls-Royce engines).

(2) Boeing Service Bulletin 747–31–2427, dated July 29, 2010 (for airplanes with General Electric engines).

(3) Boeing Service Bulletin 747–31–2428, dated July 29, 2010 (for airplanes with Pratt & Whitney engines).

(h) Duct Assembly Replacement and Wiring Changes

Within 60 months after the effective date of this AD: Replace the duct assembly with a new duct assembly, do wiring changes, and route certain wire bundles, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6591; email: *ana.m.hueto@faa.gov.*

(2) For Boeing 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.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–21A2523, Revision 1, dated October 3, 2011.

(ii) Reserved.

(3) For Boeing 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 30, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29707 Filed 12–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117, 119 and 121

[Docket No. FAA–2009–1093]

RIN 2120–AJ58

Flightcrew Member Duty and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of Initial Supplemental Regulatory Impact Analysis.

SUMMARY: The FAA is issuing an Initial Supplemental Regulatory Impact Analysis of its final rule amending its existing flight, duty and rest regulations applicable to certain certificate holders and their flightcrew members. That document may be found in the docket listed above. The Initial Supplemental Regulatory Impact Analysis serves to provide more detail on the potential impacts the final rule would have on cargo-only operations. In addition, the Initial Supplemental Regulatory Impact Analysis provides expanded discussion of the methodology and information sources used in the original Regulatory Impact Analysis, corrects some reporting of results and minor calculation errors present in that document, and presents sensitivity analysis on key assumptions used in the analysis.

DATES: Comments are due February 11, 2013.

FOR FURTHER INFORMATION CONTACT: For technical issues: Nan Shellabarger, Aviation Policy and Plans (APO–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274; email: *nan.shellabarger@faa.gov.* For legal issues: Rebecca MacPherson, Office of the Chief Counsel, International Law, Legislation, and Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2011, the Federal Aviation Administration (FAA) issued a final rule that was published in the **Federal Register** as *Flight Crew Member Duty and Rest Requirements* on January 4, 2012. 77 FR 330. The regulations, which are limited to passenger operations conducted under 14 CFR part 121 (part 121), become effective on January 4, 2014. On December 21, 2011, the FAA also issued a Regulatory Impact Analysis (original RIA) dated November 18, 2011 (FAA–2009–1093–2477). The original RIA provides the basis for the FAA's decision to (1) promulgate the final rule establishing new flight, duty and rest requirements for flight crews in passenger operations; and (2) exclude flight crews in cargo-only operations from the new mandatory requirements. While cargo-only operations are not required to meet the new regulations, the rule permits these operators to opt in to the rule if they so choose.

On December 22, 2011 the Independent Pilots Association (IPA) filed a timely petition for review. During the course of reviewing the administrative record for the purpose of preparing the government's brief, the FAA discovered errors in the original RIA that supports the final rule. The errors were associated with the scope of costs related to the implementation of the regulations for cargo-only operations. These errors appeared to be of a sufficient amount that the FAA concluded it was prudent to review the portion of the cost-benefit analysis related to cargo-only operations and allow interested parties an opportunity to comment on the corrected analysis.

On May 17, 2012, the FAA asked the United States Court of Appeals for the District of Columbia Circuit to suspend the litigation of the final rule while the agency corrected the inadvertent errors it had discovered. The court granted the FAA's motion on June 8, 2012. While the passenger operations rule is not at issue in the court proceedings, the FAA, in an abundance of caution, decided to have that portion of the original RIA reevaluated as well. The FAA contracted with the John A. Volpe National Transportation Systems Center to review the original RIA for accuracy, correct any errors identified, and prepare a supplemental regulatory evaluation laying out the revised analysis. This Initial Supplemental RIA is the product of that review.

The FAA does not believe that it is statutorily foreclosed from issuing an RIA and considering the costs and benefits of the flight, duty, and rest rule. Section 212 of Public Law 111–216 contains a list of factors that Congress wanted the FAA to consider as part of this rulemaking. There is no indication in the statutory text of this section that this list was intended to be exhaustive. However, in its motion to the Court of Appeals, the FAA stated that it would provide petitioner with an opportunity to present its view that Public Law 111–216 prohibits the FAA from conducting a cost-benefit analysis. Accordingly, the FAA seeks comment on whether Public Law 111–216 permits the FAA to conduct a cost-benefit analysis.

Turning to the Initial Supplemental RIA, while this Initial Supplemental RIA largely mirrors the original RIA in both content and organizational structure, it does not re-evaluate the policy decisions behind the FAA's decision to issue a final rule implementing new flight, duty and rest requirements for part 121 carriers engaged in passenger operations. Rather, this Initial Supplemental RIA provides expanded discussion of the methodology and information sources used in the rulemaking analysis, corrects reporting and calculation errors identified in the original RIA, and presents sensitivity analysis on key assumptions used in the analysis.[1] A new Appendix B contains the results of those sensitivity analyses while Appendix C contains detailed data tables, which are summarized in the body of this Initial Supplemental RIA. The Initial Supplemental RIA results in data that provides greater justification for the exclusion of cargo operations from the final rule, and continues to provide justification for the final rule on passenger operations. As a result, the FAA has determined that no revisions to the final rule on either cargo or passenger operations is warranted.

In the original RIA, the portion of scheduling costs related to cargo-only operations of air carriers that conduct both passenger and cargo-only operations (mixed operations carriers) were inadvertently excluded from the reported costs of extending the final rule to cargo-only operations. This Initial Supplemental RIA fixes that omission and that revision has significantly increased the estimates of the stated costs of extending the final rule to cargo-only operations. Due to inclusion of impacts on cargo-only operations, a few air carriers were reclassified for ease of explication.

Table 1 and Table 2 summarize the differences between the original RIA and the Initial Supplemental RIA.

[1] Wherever possible, this Initial Supplemental RIA relies on the same data used for the original RIA. In some cases, new estimates were developed and more recent data sources were used.

TABLE 1—PASSENGER OPERATIONS NOMINAL COSTS AND BENEFITS OVER 12-YEAR ANALYSIS PERIOD

	Original RIA (millions)	Supplemental RIA (millions)	Difference (millions)
Total Benefits—Base Case	$376	$401	$25
Total Benefits—High case	716	757	41
Total Costs	390	457	67

TABLE 2—CARGO-ONLY NOMINAL COSTS AND BENEFITS OVER 12-YEAR ANALYSIS PERIOD

	Original RIA (millions)	Supplemental RIA (millions)	Difference (millions)
Total Benefits—Base Case	** $20.35	$5	
Total Benefits—High Case	** 32.55	31	
Total Costs	306	550	$244

** The FAA did not detail potential benefits to cargo-only operations in the original RIA. Rather, the FAA assumed that benefits associated with averting a single catastrophic accident involving a cargo plane would range between $20.35 million and $32.55 million.

Comments Invited

The FAA invites interested persons to review the Initial Supplemental RIA and submit written comments, data, or views. The most helpful comments reference a specific portion of the Initial Supplemental RIA, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning the Initial Supplemental RIA. Before issuing the Final Supplemental RIA, the agency will consider all comments we receive on or before the closing date for comments. It will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change the Final Supplemental RIA in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the legal contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

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

Availability of Rulemaking Documents

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

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

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

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

Alternatively, a copy may be requested directly from the FAA by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

All documents the FAA considered in developing the underlying final rule, *Flight Crew Member Duty and Rest Requirements* and this Initial Supplemental RIA, including economic analyses and technical reports, are located in the docket for this rulemaking and may be viewed on the internet through the Federal eRulemaking Portal referenced in paragraph (1).

Issued on: December 6, 2012.

Rebecca MacPherson,

Assistant Chief Counsel for International Law, Legislation and Regulations.

[FR Doc. 2012–29941 Filed 12–7–12; 4:15 pm]

BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 455

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of its Used Motor Vehicle Trade Regulation Rule (''Used Car Rule'' or ''Rule'') as part of the FTC's systematic review of all current Commission regulations and guides. The Commission has decided to retain the Rule and to issue this final rule making nonsubstantive revisions to the Spanish translation of the Used Car Buyers Guide and nonsubstantive technical changes to the Rule. The revisions to the Spanish translation were published for public comment when the Commission announced its regulatory review of the Rule.

DATES: *Effective Date:* This rule is effective on February 11, 2013.

ADDRESSES: Requests for copies of this document should be sent to: Public Records Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. This document, and public records related to the FTC's regulatory review, are also available at that address and at *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe, Suite 1825, Chicago, Illinois 60603, (312) 960–5634.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Used Car Rule in 1984 and the Rule became effective in 1985.[1] The Used Car Rule is intended primarily to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on a window sticker called the ''Buyers Guide'' that dealers are required to display on used cars. The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer's warranty and, if so, the basic terms, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty. The Rule additionally provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract.

Among other information, the Buyers Guide includes: (1) A suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; (2) a warning against reliance on spoken promises that are not confirmed in writing; and (3) a list of fourteen major systems of a used motor vehicle and the major defects that may occur in these systems.

The Rule prescribes Spanish language versions of the Buyers Guide when dealers conduct sales in Spanish.[2] In 1995, as part of its periodic review, the Commission amended the Used Car Rule by,[3] among other things, adopting several minor grammatical changes to the Spanish language version of the Buyers Guide.

II. Analysis

On July 21, 2008, the Commission announced in the **Federal Register** its regulatory review of the Rule as part of the FTC's systematic review of its rules and guides.[4] The Commission has decided to retain the Rule, to revise the Spanish translation of the Buyers Guide as proposed in that **Federal Register** document, and to make three nonsubstantive technical changes to the text of the Rule.

A. Changes to Spanish Translation of Buyers Guide

During the regulatory review, the Commission received one comment favoring the translation changes,[5] and none opposing them. The Commission received two comments recommending that the Rule require translations of the Buyers Guide into the language used to conduct the sale.[6] Two comments state that the Buyers Guide should not be translated into Spanish.[7]

During the original 1984 rulemaking, the Commission chose to translate the Buyers Guide only into Spanish. At that time, the Commission considered whether to require a translation of the Buyers Guide into the language used to conduct a used car sale.[8] The Commission concluded that such a requirement could result in translations of the Buyers Guides of varying linguistic quality and accuracy unless the Commission published official translations of the Buyers Guide into the various languages used in the United States.[9] The Commission decided to limit the translation of the Buyers Guide to Spanish because, besides English, Spanish is the language most frequently used in the United States during used car transactions.[10] The Commission sees no reason to revisit its earlier decision and declines to propose requiring translations of the Buyers Guide into languages other than English and Spanish.

B. Technical Revisions to the Rule

The Commission is also making three minor nonsubstantive changes to the Rule. First, the Commission is correcting a typographical error by changing ''diffential'' to ''differential'' in 16 CFR 455.2(b)(2)(ii). Second, the Commission is correcting the terminology used in 16 CFR 455.2(d) by changing the term ''name'' to ''make.'' Finally, the Commission is changing the example of an automobile make in 16 CFR 455.2(d) from ''Vega'' to ''Corvette'' because the Vega has not been manufactured since 1977.

III. Procedural Requirements

A. Administrative Procedure Act

Section 1029(d) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act[11] authorizes the Commission to use Administrative Procedure Act[12] procedures to issue or amend rules with respect to motor vehicle dealers predominantly engaged in the sale and servicing, or leasing and servicing, of motor vehicles. Pursuant to this authority, the Commission is implementing several technical amendments to the Used Car Rule.

The Commission finds good cause to adopt these changes without further public comment. Under the APA, notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[13]

In this case, the Commission finds that additional public comment on the rule is unnecessary because the Commission has already provided an opportunity for public comment on these revisions to the Spanish

[1] 49 FR 45692 (Nov. 19, 1984).

[2] 16 CFR 455.5.

[3] 60 FR 62195 (Dec. 5, 1995).

[4] 73 FR 42285 (July 21, 2008). In a separate **Federal Register** document, the Commission is publishing a notice of proposed rulemaking (''NPR'') addressing the comments received during its review and inviting public comment on whether to amend the Rule and to revise the Buyers Guide. The NPR seeks comments on, among other things, adding a statement, in Spanish, to the English Buyers Guide suggesting that Spanish-speaking consumers who cannot read the English Buyers Guide ask for a copy of it in Spanish.

[5] Joint letter from the Consumer Action, Consumers for Auto Reliability and Safety, Consumer Federation of America, Consumer Federation of California, National Consumer Law Center, U.S. Public Interest Group, Watsonville Law Center (collectively referred to as ''CARS,'' which signed the joint letter) at 31–35 (page numbers added for convenience). The comment from CARS and other comments that were received by the Commission in response to the regulatory review are available at *http://www.ftc.gov/os/comments/usedcarrule/index.shtm.* Additional comments on the regulatory review, submitted during a second comment period, are available at *http://www.ftc.gov/os/comments/usedcarrulereopen/index.shtm.*

The comment from CARS also proposes numerous corrections to the Spanish translation, such as correcting missing accents and typographical errors. These errors appeared in the Spanish Buyers Guide available on the FTC's Web site, but were not part of the amended Spanish Buyers Guide that was adopted by the Commission and published in the **Federal Register** in 1995. After receiving the CARS comment, the FTC Web site version of the Buyers Guide was corrected. The current **Federal Register** notice document incorporates those changes and makes the additional translation revisions described in this document.

[6] CARS at 24–25; Broward County, Florida, Permitting, Licensing and Consumer Protection Division at 7 (Sept. 19, 2008).

[7] Sachau, Barbara (consumer) (July 21, 2008); King, Monty (Oregon Vehicle Dealer Association) (Aug. 27, 2008).

[8] Trade Regulation Rule Concerning Used Motor Vehicles, Statement of Basis and Purpose and Regulatory Analysis (''SBP''), 49 FR 45692, at 45711 (1984).

[9] *Id.*

[10] *Id.*

[11] Public Law 111–203, Title X, § 1029(d); 12 U.S.C. 5519(d).

[12] 5 U.S.C. 553.

[13] 5 U.S.C. 553(b)(3)(B).

translation of the Buyers Guide. Specifically, the Commission requested public comment on these revisions to the Spanish translation of the Buyers Guide as part of its regulatory review of the Buyers Guide. *See* 73 FR 42285. In response to the Commission's request for comment on these proposed changes, the Commission received one comment favoring the translation changes,[14] and no comments opposing the changes. Accordingly, the Commission has determined that the public has had sufficient opportunity to comment on the proposed changes. As a result, additional opportunity for public comment is unnecessary.

Moreover, additional public comment is unnecessary because the changes are merely nonsubstantive revisions to ensure the clarity and accuracy of the translation of the Buyers Guide. The Commission finds that these technical, nonsubstantive changes are minor, routine clarifications of the text of the Spanish translation that will not have a significant effect on industry or the public, and therefore additional public comment is unnecessary.

Accordingly, the Commission finds that there is good cause for adopting this final rule as effective on February 11, 2013.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires an agency to provide a Final Regulatory Flexibility Act Analysis (''FRFA'') when promulgating a final rule that cannot be promulgated without publishing a proposed rulemaking.[15] An FRFA is not necessary if a general notice of proposed rulemaking is not required for promulgation or if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[16]

The Commission anticipates that the final Rule will not have a significant economic impact on a substantial number of small entities. The amended Rule, like the current Used Car Rule, does not contain reporting or recordkeeping requirements, but does require that dealers disclose certain information. The amended Rule requires only that dealers use a revised Spanish Buyers Guide when conducting sales in Spanish. The amended Rule does not impose additional recordkeeping requirements or change the information that dealers themselves must disclose on the Buyers Guide. Dealers will experience only an initial cost in obtaining revised Spanish Buyers Guides and will be permitted to use existing stocks of Spanish Buyers Guides. As such, the economic impact of the Rule will be minimal.

This document serves as notice to the Small Business Administration (''SBA'') of the agency's certification of no significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The final Rule revises the Spanish translation of the Buyers Guide that the Used Car Rule requires used car dealers to display. The final Rule does not require dealers to disclose additional information that they are not already required to provide under the current Rule. Thus, the final Rule does not give rise to changes in the FTC's previously submitted and approved ''collection of information'' requirements and related Paperwork Reduction Act burden analysis for public comment[17] and cleared by the Office of Management and Budget.[18]

D. Regulatory Analysis

Section 22 of the FTC Act, 15 U.S.C. 57b, requires the Commission to issue a preliminary regulatory analysis when promulgating a final rule amending a rule if the Commission: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or consumers.

A final regulatory analysis is not necessary because the Commission has determined that these amendments to the Used Car Rule will not have such an annual effect on the national economy, on the cost or prices of goods or services sold by used car dealers, or on covered businesses or consumers. Commission staff estimates that each business affected by the final Rule will likely incur only minimal initial added compliance costs as dealers obtain revised Spanish Buyers Guides.

IV. Conclusion

Accordingly, after review of the public comments, the Commission has determined to amend 16 CFR 455.5 by translating the term ''dealer'' into Spanish as ''concesionario'' in footnote 4 of the rule and in the accompanying illustration of the Spanish Buyers Guide. The Commission is also revising the translation of certain other terms in the Guide as follows: ''regardless of'' shall be translated as ''independientemente de''; ''Frame-cracks'' shall be translated as ''Grietas en el chasis''; ''Cooling System'' shall be translated as ''Sistema de enfriamiento''; ''Air conditioner'' shall be translated as ''Aire acondicionado''; ''Defroster'' shall be translated as ''Desempañador''; and ''Not enough pedal reserve'' shall be translated as ''Distancia insuficiente del pedal.''[19] Finally, the Commission is amending the Rule by making the three nonsubstantive textual revisions described in Section II.B. above.

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

Accordingly, for the reasons stated above, the Federal Trade Commission amends part 455 of title 16 of the Code of Federal Regulations as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

■ 1. Revise the authority citation for part 455 to read as follows:

Authority: 15 U.S.C. 2309; 15 U.S.C. 41–58.

§ 455.2 [Amended]

■ 2. Revise § 455.2 as follows:

■ a. In paragraph (b)(2)(ii), by removing the word ''diffential'' and adding, in its place, the word ''differential;''

■ b. In paragraph (d), by removing the word ''name'' and adding, in its place, the word ''make'' and by removing the word ''Vega'' and adding, in its place, the word ''Corvette;''

■ 3. Amend § 455.5 as follows:

■ a. In footnote 4, by removing the word ''vendedor'' and adding, in its place, the word ''concesionario;'' and

■ b. By removing the current illustration accompanying § 455.5 and adding, in its place, the following illustration:

§ 455.5 Spanish language sales.

* * * * *

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[14] Joint letter from CARS, at 31–35.

[15] 5 U.S.C. 604(a).

[16] *Id.*

[17] 76 FR 144 (Jan. 3, 2011); 75 FR 62538 (Oct. 12, 2010).

[18] OMB Control No. 3084–0108 (exp. Feb. 28, 2014).

[19] Dealers may use remaining stocks of existing Spanish Buyers Guides.

GUÍA DEL COMPRADOR

28 pt Triumvirate Bold caps

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al concesionario que ponga todas las promesas por escrito. Conserve este formulario.

2 pt rule

10/10 pt Triumvirate Bold c & lc
maximum line 38 picas

MARCA DEL VEHÍCULO MODELO AÑO NÚMERO DE IDENTIFICACIÓN

Hairline rule
6 pt Triumvirate Bold caps

NÚMERO DE ABASTO DEL DISTRIBUIDOR (Opcional)

Hairline rule
6 pt Triumvirate Bold caps

GARANTÍAS PARA ESTE VEHÍCULO:

10 pt Triumvirate Bold caps

2 pt rule

☐ COMO ESTÁ—SIN GARANTÍA

28 pt box, 1 pt stroke
24 pt Triumvirate Bold caps

USTED PAGARÁ TODOS LOS GASTOS DE CUALQUIER REPARACIÓN QUE SEA NECESARIA. El concesionario no asume ninguna responsabilidad por cualquier reparación, independientemente de las declaraciones verbales que haya hecho acerca del vehículo.

10/10 pt Triumvirate Bold c & lc
maximum line 38 picas

1 pt rule

☐ GARANTÍA

28 pt box, 1 pt stroke
24 pt Triumvirate Bold caps

☐ **COMPLETA** ☐ **LIMITADA. El concesionario pagara el ___% de la mano de obra y ___% de los repuestos de los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pida al concesionario una copia del documento de garantía donde se explican detalladamente la cobertura de la garantía, exclusiones y las obligaciones que tiene el concesionario de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.**

8 pt boxes, 1 pt stroke
10/10 pt Triumvirate Bold c & lc
7½ picas indent on runovers

SISTEMAS CUBIERTOS POR LA GARANTÍA: **DURACIÓN:**

10/10 pt Triumvirate Bold caps

Hairline rules

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden concederle derechos adicionales.

10/10 pt Triumvirate Bold c & lc
maximum line 38 picas

INSPECCIÓN PREVIA A LA COMPRA: PREGUNTE AL CONCESIONARIO SI PUEDE USTED TRAER UN MECÁNICO PARA QUE INSPECCIONE EL AUTOMÓVIL O LLEVAR EL AUTOMÓVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

10/10 pt Triumvirate Bold caps
maximum line 38 picas

VÉASE EL DORSO DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 pt Triumvirate Bold c & lc
maximum line 38 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

Chasis y carrocería
- Grietas en el chasis, soldaduras correctivas u oxidadas
- Chasis doblado o torcido

Motor
- Fuga de aceite, excluyendo el escape normal
- Bloque o tapa de rodamiento agrietados
- Correas que faltan o no funcionan
- Fallo o pistoneo
- Emisión excesiva de humo por el sistema de escape

Transmisión y eje de cardán
- Nivel de líquido inadecuado o fuga, excluyendo filtración normal
- Cubierta agrietada o visiblemente dañada
- Vibración ó ruido anormal ocasionado por una transmisión o eje de cardán defectuoso
- Cambio de marchas o funcionamiento inadecuado en cualquier marcha
- Embrague manual patina o vibra

Diferencial
- Nivel de líquido inadecuado o fuga excluyendo filtración normal
- Cubierta agrietada o visiblemente dañada
- Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de enfriamiento
- Fuga, incluido el radiador
- Bomba de agua defectuosa

Sistema eléctrico
- Fuga en las baterías
- Alternador, generador, batería, o motor de arranque defectuosos

Sistema de combustible
- Escape visible de combustible

Accesorios averiados
- Indicadores o medidores del cuadro de instrumentos
- Aire acondicionado
- Calefactor y Desempañador

Sistema de frenos
- Luz de advertencia de falla dañada
- Pedal no firme bajo presión (Especif. del Dpto. de Transp.)
- Distancia insuficiente del pedal (Especif. del Dpto. de Transp.)
- No detiene el vehículo en línea recta (Especif. del Dpto. de Transp.)
- Conductos dañados
- Tambor o disco muy delgados (Especif. del fabricante)
- Grosor de las bandas de los frenos menor de 1/32 de pulgada
- Sistema de servofreno dañado o con escape
- Partes estructurales o mecánicas dañadas

Sistema de dirección
- Juego excesivo en el volante (Especif. del Dpto. de Transp.)
- Juego en el varillaje en exceso de 1/4 pulgada
- Engranaje del volante de dirección se agarrota
- Ruedas delanteras mal alineadas (Especif. del Dpto. de Transp.)
- Correas del sistema de servodirección agrietadas o flojas
- Nivel del líquido del sistema de servodirección inadecuado

Sistema de suspensión
- Soltos de conexión de rodamientos defectuosos
- Piezas estructurales dobladas o dañadas
- Barra de estabilización desconectada
- Resorte roto
- Montura del amortiguador floja
- Bujes de goma dañadas o ausentes
- Estabilizador para curvas dañadas o ausente
- Amortiguador tiene fuga o funciona defectuosamente

Llantas
- Profundidad de la banda de rodamiento menor de 2/32 de pulgada
- Diferentes tamaños de llanta
- Daños visibles

Ruedas
- Grietas visibles, daños o reparaciones
- Pernos de montaje sueltos o ausentes

Sistema de Escape
- Fuga

CONCESIONARIO

DIRECCIÓN

VÉASE PARA RECLAMACIONES

IMPORTANTE: La información contenida en este formulario forma parte de todo contrato de compra de este vehículo. Constituye una contravención de la ley federal (16 C.F.R. 455) quitar este rótulo antes de la compra del vehículo por el consumidor (salvo para conducir el automóvil en calidad de prueba).

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flush left ragged right
maximum line 38 picas

2 pt rule

7/8 pt Triumvirate Bold & Light
c & lc
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

2 pt rule

Hairline rules
6 pt Triumvirate Bold caps

2 pt rule

8/9 pt Triumvirate Bold c & lc
maximum line 38 picas

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–29901 Filed 12–11–12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1125]

RIN 1625–AA11

Regulated Navigation Area; S99 Alford Street Bridge Rehabilitation Project, Mystic River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is reinstating a regulated navigation area (RNA) that was promulgated to protect the public against hazardous conditions created by repair work on the S99 Alford Street Bridge across the Mystic River between Boston and Chelsea, Massachusetts. The original RNA terminates on November 30, 2012 and must be reinstated because repair work is continuing beyond that date. This rule promotes the Coast Guard's maritime safety and stewardship missions.

DATES: This rule is effective in the CFR on December 12, 2012. This rule is effective with actual notice for purposes of enforcement from 11:59 p.m. on November 30, 2012, through December 31, 2014. Public comments will be accepted and reviewed by the Coast Guard through December 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2011–1125. 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 the rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil;* or Lieutenant Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing 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
COTP Captain of the Port

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1125), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–1125) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number ''USCG–2012–1125'' in the ''SEARCH'' box and click ''Search.'' Click and 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

The Coast Guard does not currently plan to hold public meetings. However, a public meeting may be requested by using one of the methods specified under **ADDRESSES**. Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory Information

This is the second temporary interim rule with request for comments issued by the Coast Guard to establish a regulated navigation area in connection with the S99 Alford Street Bridge rehabilitation over the main channel of the Mystic River between Boston and Chelsea, Massachusetts. The first rule was published in the **Federal Register** on January 9, 2012 (77 FR 1020). We received no public comments on the first rule.

The Coast Guard is issuing this second rule without prior **Federal Register** notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard has good cause to find that publishing a notice of proposed rulemaking (NPRM) for this second rule, and taking public comment on that NPRM, would be both impracticable and contrary to the public interest. The repair work that necessitated the first rule has not been completed on schedule and therefore the hazardous conditions that gave rise to the need for RNA protective measures continue. Expiration of the first RNA on November 30, 2012 leaves no time for notice and comment procedures if both the repair work and RNA protective measures are to remain in place after that date. Temporarily stopping necessary repair work would impracticably delay the resumption of normal traffic patterns and raise construction costs, contrary to the public interest. To some extent, it is also unnecessary to follow normal notice and comment practice with respect to this RNA, because the affected public can clearly see that the bridge repair work and that work's associated hazards continue, and anyone who wishes to comment on the need for or the terms of the RNA may at any time submit comments to the Coast Guard, and the Coast Guard will respond to those comments.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

C. Basis and Purpose

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

The purpose of this temporary interim rule and request for comments is to keep in place and extend the regulated navigation area that was the subject of the Coast Guard temporary interim rule and request for comments published in the **Federal Register** on January 9, 2012 in order to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the rehabilitation project of the S99 Alford Street Bridge.

D. Discussion of Rule

This rule reinstates a regulated navigation area that was promulgated to protect the public against hazardous conditions created by repair work on the S99 Alford Street Bridge across the Mystic River between Boston and Chelsea, Massachusetts. The original RNA took effect with actual notice on December 27, 2011, was the subject of a temporary interim rule and request for comments published in the **Federal Register** on January 9, 2012, and expires by its own terms at 11:59 p.m. on November 30, 2012. However, the repair work is continuing beyond that date and therefore the RNA must be reinstated to extend the RNA's protective measures for the duration of that work. This new temporary interim rule and request for comments makes no substantive changes in the RNA.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be minimal because the amount of traffic in this waterway is extremely limited. Furthermore, the Captain of the Port has the ability to suspend the provisions of this regulation when necessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended requires federal agencies to consider the potential impact of regulations on small entitles during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would 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 marinas, businesses (such as waterside restaurants), and vessels who intend to transit in the Mystic River beneath the S99 Alford Street Bridge during the effective period.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: this action only serves to reinstate an RNA that is already in place and for which no public comments were received. Many parties that have the potential to be affected have been involved in the discussions and have made plans to work around the closure times. We will use appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

3. Assistance for Small Entities

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

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 States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one

of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the modification of an existing regulated navigation area. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–1130 to read as follows:

§ 165.T01–1130 Regulated Navigation Area; S99 Alford Street Bridge rehabilitation project, Mystic River, MA

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of the Mystic River between Boston and Chelsea, MA, from surface to bottom, within 100 yards of any point on the S99 Alford Street Bridge.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply in addition to those provisions outlined below.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by Captain of the Port (COTP) Sector Boston.

(3) All persons and vessels must comply with all directions given to them by the COTP Sector Boston or the on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding any other provisions in this regulation, the movement of official, emergency vessels within the regulated area is permitted provided that the contractor is notified in order to remove potential hazards or obstructions.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement period.* (1) This regulated navigation area is enforceable 24 hours a day from 11:59 p.m. on November 30, 2012 through December 31, 2014.

(2) The COTP Sector Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification may include but are not limited to Broadcast Notice to Mariners, Local Notice to Mariners and Marine Safety Information Bulletins. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Report violations of this regulated navigation area to the COTP Sector Boston, at (617) 223–5757 or on VHF-Channel 16.

Dated: November 29, 2012.

D.B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2012–30005 Filed 12–11–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–YELL–11802; PPWONRADE2, PMP00EI05.YP0000]

36 CFR Part 7

RIN 1024–AE10

Special Regulations; Areas of the National Park System, Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the amended Record of Decision for the 2011 Winter Use Plan/Environmental Impact Statement and governs winter visitation and certain recreational activities in Yellowstone National Park for the 2012–2013 winter season. The rule retains, for one additional year, the regulation and management framework that have been in place for the past three winter seasons (2009–2010, 2010–2011, and 2011–2012). Specifically, the rule retains provisions that require most recreational snowmobiles operating in the park to meet certain National Park Service air and sound emissions requirements; requires snowmobiles and snowcoaches in Yellowstone to be accompanied by a commercial guide; sets daily entry limits on the numbers of snowmobiles (up to 318) and snowcoaches (up to 78) that may enter the park; and prohibits traveling off designated oversnow routes.

DATES: This rule is effective December 15, 2012.

FOR FURTHER INFORMATION CONTACT: Wade Vagias, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307–344–2035.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has managed winter use in Yellowstone National Park for several decades. A detailed history of the winter use issue, past planning efforts, and litigation is provided on the park's Web site, *http://www.nps.gov/yell/parkmgmt/timeline.htm.* The park has most recently operated under a temporary one-year rule (76 FR 77131). That rule extended for one winter season the daily entry limits and operational requirements for snowmobiles and snowcoaches adopted by the 2009 interim plan, which had been in effect for the prior two winter seasons, but the authorizations of snowmobile and snowcoach use expired by their own terms on March 15, 2012.

On July 5, 2011, the NPS published a proposed long-term rule to implement the preferred alternative identified in the Draft Winter Use Plan/Environmental Impact Statement (DEIS) (76 FR 39048). Under that alternative, the NPS proposed providing four different use-level combinations for snowmobiles and snowcoaches, which would vary according to a seasonal schedule. The NPS had intended to issue a record of decision and finalize a long-term rule for Yellowstone winter

use by December 2011. However, some of the more than 59,000 public comments received on the DEIS raised reasonable questions as to long-term management strategies and environmental impacts, and the NPS decided to delay implementation of a long-term rule in order to prepare a Supplemental Environmental Impact Statement (SEIS) further analyzing the impacts of winter use under various long-term management options.

Accordingly, in its December 2011 Record of Decision (ROD) (76 FR 77249), the NPS announced its decision to select and implement Alternative 8 in the Final Environmental Impact Statement (FEIS). Alternative 8 extended for one additional winter season—the 2011–2012 season—the daily entry limits and operating requirements of the 2009 rule, which allowed up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches in the park per day, as well as authorizing a variety of non-motorized uses. The DEIS and FEIS contained and analyzed an alternative—identified as Alternative 2—implementing those limits and operating requirements indefinitely into the future. On December 12, 2011, the NPS published a final rule to implement Alternative 8 (76 FR 77131). The NPS believed that the additional time afforded by a new one-season rule would allow it to complete the SEIS, decide on a long-term plan for managing winter use, and promulgate a new long-term rule before the beginning of the 2012–2013 winter season.

On June 29, 2012, the NPS released the Draft SEIS and published a Notice of Availability in the **Federal Register** (77 FR 38824). Public comment on the Draft SEIS closed on August 20, 2012. The response from the public and stakeholders was robust. A majority of the substantive comments addressed the proposal in the Draft SEIS's preferred alternative to manage snowmobiles and snowcoaches by a new concept known as ''transportation events.'' Numerous commenters requested additional time to consider this new management concept and to respond substantively to it. Accordingly, the NPS decided to reopen public comment on the Draft SEIS for an additional 30 days. Mindful of the short amount of time left before the opening of the 2012–2013 winter season on December 15, 2012, and desiring to take the time necessary to make a reasoned long-term decision on winter use, the NPS decided to amend the December 2011 ROD to authorize extending the most recent winter use management framework for an additional year. The NPS is promulgating this new rule to extend for one additional winter season the 2011–2012 daily entry limits and operating requirements. The NPS intends to complete the Draft SEIS, make a decision on a plan for long-term winter use, and issue a new long-term regulation for winter use before the 2013–2014 winter season.

Analysis of Public Comments

The public comment period was open from September 4, 2012 to October 4, 2012. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: *http://www.regulations.gov.* The NPS received 33 comments. Most of the comments focused on the analysis in the Draft SEIS and addressed issues related to long-term management. The NPS will consider these comments regarding long-term issues as it works on the SEIS and new rule for the long-term winter use plan. A summary of comments and the NPS responses is provided below.

1. *Comment:* Several comments did not support extending the 2011–2012 daily entry limits and operating requirements for the 2012–2013 winter season, and instead favored implementation of Alternative 4 in the Draft SEIS.

NPS Response: As described above, the NPS decided to extend the 2011–2012 requirements for one additional season to ensure that the public would have additional time to consider the new management concept in the Draft SEIS and to allow the NPS to make a reasoned long-term decision on winter use at Yellowstone National Park.

2. *Comment:* One commenter stated that all regulation of snowmobile use in the park should be removed.

NPS Response: In the 2011 FEIS, the NPS considered but dismissed an alternative that would have removed limits on snowmobile use in the park, due to the fact that unmanaged use could result in impairment to park resources and values.

3. *Comment:* Several commenters stated that the rule should be revised to allow fewer snowmobiles and snowcoaches.

NPS Response: In the 2011 ROD, the NPS determined that use of snowmobiles and snowcoaches in the park at the levels allowed in this rule is appropriate. The data included in the 2011 FEIS demonstrates that allowing 318 snowmobiles and 78 snowcoaches in the park per day results in only minor to moderate impacts to park resources, while allowing the public to experience the park's unique winter resources.

4. *Comment:* Several commenters suggested that the NPS alter the way it tests emissions from snowmobiles and snowcoaches.

NPS Response: The NPS may consider altering the testing standards for snowmobiles and snowcoaches as part of the long-term rule. However, there is not enough time to alter the testing standards for this rule, which goes into effect on December 15, 2012, and applies to the 2012–2013 winter season only.

5. *Comment:* Several commenters suggested that the NPS ban the use of snowmobiles and snowcoaches in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would eliminate motorized oversnow vehicle use. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

6. *Comment:* Several commenters suggested that the NPS allow only snowcoaches in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would prohibit snowmobiles and allow only snowcoaches. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

7. *Comment:* Several commenters suggested that the NPS increase the number of snowmobiles allowed in the park.

NPS Response: As part of the range of alternatives analyzed in the SEIS, the NPS is considering an alternative that would increase the number of snowmobiles allowed in the park. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

8. *Comment:* One commenter stated that the NPS should restrict snowmobile use to areas where people and wildlife are not present.

NPS Response: Under this rule, snowmobile and snowcoach use is only allowed on designated routes, which are groomed over roads that are used in the summer and provide access from park entrances to the interior of the park. There are many additional areas and trails that are open to visitors in the park where snowmobile and snowcoach use is not allowed.

9. *Comment:* One commenter stated that the NPS should impose snowcoach weight limitations that would ban Bombardiers.

NPS Response: The NPS may consider imposing additional restrictions on snowcoaches as part of the long-term rule. This rule was promulgated to allow the status quo that has governed winter use for the past three seasons while the NPS makes a long-term decision about motorized winter use in the park.

10. *Comment:* One commenter stated that unguided snowmobile use should be allowed.

NPS Response: The NPS believes that requiring all snowmobile and snowcoach trips to be guided reduces law enforcement incidents and accidents, and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the park. The guiding requirement has proven effective at keeping groups under the speed limits, staying on the groomed road surfaces, reducing conflicts with wildlife, and ensuring other appropriate behavior for visitors to safely and responsibly visit the park.

Section by Section Analysis

The NPS is revising § 7.13 paragraphs (l)(3)(ii) and (l)(4)(vi) and the introductory text of paragraphs (l)(7)(i) and (l)(8)(i) by replacing the terms ''the winter season of 2011–2012'' and ''the winter of 2011–2012'' with the terms ''the winter season of 2012–2013'' and ''the winter of 2012–2013.'' These are the only changes to the existing regulations.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The NPS used two separate baselines for its regulatory flexibility analysis. If no new rule were passed, Baseline 1 would be defined by the no-action alternative in the EIS. Under this baseline, no motorized oversnow vehicles would be allowed in the park. In addition, the NPS defined a second baseline, Baseline 2. Baseline 2 represents the continuation of the same levels of use allowed under the 2009 interim regulation in place for the past three winter seasons. Under Baseline 2, there would be a zero net change between the past three years and the actions being implemented under this rule, because the rule extends the management framework in place the past three winter seasons for one additional year. A regulatory flexibility analysis is included in the report titled ''Economic Analysis of Winter Use Regulations in Yellowstone National Park'' (RTI International, 2011). The NPS has reviewed the economic analysis contained in that report and has concluded that it still is relevant and that its results would apply to the additional year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S.-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. The rule addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. Access to private property located adjacent to the park will be afforded the same access during winter as before this rule. No other property is affected. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that

consultation under the Department's tribal consultation policy is not required. Numerous tribes in the area were consulted in the development of the previous winter use planning documents.

Paperwork Reduction Act (PRA)

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the collection requirement associated with Commercial Services and has assigned OMB control number 1024–0125 (expires 03/31/2013). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This winter use plan and rule constitute a major Federal action with the potential to significantly affect the quality of the human environment. The NPS prepared the 2011 FEIS under the National Environmental Policy Act of 1969. The NPS has reexamined the analyses contained in the 2011 FEIS, as well as new data from the 2011–2012 winter season, and has amended the December 2011 ROD (76 FR 77249) to authorize extending the most recent winter use management framework for an additional year. The 2011 FEIS is available for review at *http://parkplanning.nps.gov/yell* by clicking on the link entitled ''Winter Use Plan/EIS'' and then clicking on the link entitled ''Document List.''

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211, a statement of Energy Effects is not required.

Administrative Procedure Act (Effective Date)

The National Park Service recognizes that under 5 U.S.C. 553(d) new rules ordinarily go into effect thirty days after publication in the **Federal Register**. However, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that good cause exists for this rule to become effective on December 15, 2012, for the following reasons:

(1) A 30-day public comment period was open from September 4, 2012, through October 4, 2012, on the proposed rule, during which the NPS stated its intent to implement this winter use plan during the 2012–2013 winter season as an additional transition year. The NPS has received voluminous public comment on previous rulemaking efforts regarding winter use of the park, including efforts in 2000, 2003, 2004, 2007, 2008, and 2011. Those rulemaking efforts addressed many of the same issues as are addressed in this rulemaking, which simply extends existing rules that have been in place for the previous three winter seasons.

(2) The rule implements the winter use plan for Yellowstone National Park and allows snowmobile and snowcoach use that otherwise would be prohibited.

(3) Since at least December 2011 the NPS has in good faith publicly stated that the 2012–2013 winter season for Yellowstone National Park would commence on the traditional date of December 15, and the public and businesses have made decisions based on the widespread public knowledge of this customary opening date.

(4) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the park will be open under conditions substantially similar to those in effect for the past three years.

(5) Many persons planning to visit the park have already made travel plans in anticipation of the park being open for snowmobile and snowcoach use, such as reserving time off from work, booking airfares and hotel accommodations, making reservations for snowmobile or snowcoach tours, and the like. The Christmas-New Year period is one of the most heavily visited times of the winter season. If the park does not open as scheduled on December 15, 2012, it would create unnecessary hardship for visitors who have already planned trips, and would likely result in economic losses for some visitors if reservations had to be cancelled. Significant revenue loss for businesses in and around the park would also occur. Many businesses in the gateway communities surrounding the park, and the people who rely upon them for their livelihoods, are highly dependent upon the park being open for the entire duration of the approximately 90-day season.

(6) Snowmobile and snowcoach operators have made business decisions and investments for the winter season premised on an opening date of December 15, 2012. Such actions include purchasing new snowmobiles and snowcoaches for their fleets, making offers of employment, preparing advertising and other materials, and purchasing snowmobile accessories such as suits, helmets, boots, mittens, etc. A late opening would shorten an already-brief winter season, thereby depriving these businesses and others that depend on the winter season (such as hotels, restaurants, service stations, and other hospitality-oriented businesses) of revenue that is important to their livelihoods.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the forgoing, the NPS amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. In § 7.13 revise paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) introductory text, and (l)(8)(i) introductory text to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l) * * *

(3) * * *

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2012–2013.

* * * * *

(4) * * *

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2012–2013.

* * * * *

(7) * * *

(i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are designated for snowmobile use through the winter of 2012–2013:

* * * * *

(8) * * *

(i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional

oversnow routes through the winter of 2012–2013:

* * * * *

Dated: December 5, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–29911 Filed 12–11–12; 8:45 am]

BILLING CODE 4312–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0422; FRL–9759–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Emissions Inventory for the Charleston Nonattainment Area for the 1997 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), on November 4, 2009. The emissions inventory is part of the November 4, 2009 SIP revision that was submitted to meet nonattainment requirements for the Charleston, West Virginia nonattainment area (hereafter referred to as the Charleston Area) for the 1997 $PM_{2.5}$ national ambient air quality standard (NAAQS). EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on January 11, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0422. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, 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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2012 (77 FR 60094), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia for the Charleston Area. The NPR proposed approval of the $PM_{2.5}$ 2002 base year emissions inventory portion of the West Virginia SIP revision for the Charleston Area. The formal SIP revision was submitted by the State of West Virginia on November 4, 2009.

II. Summary of SIP Revision

The $PM_{2.5}$ 2002 base year emissions inventory submitted by WVDEP on November 4, 2009 for the Charleston Area includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2). WVDEP selected the year 2002 as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the Charleston Area can be found in Appendices C and D of the November 4, 2009 SIP submittal.

EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. EPA's evaluation can be found in the Technical Support Document dated August 12, 2010, available online at *www.regulations.gov,* Docket No. EPA–R03–OAR–2012–0422. EPA found that the process used to develop this emissions inventory for the Charleston Area is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories.

Specific requirements of the base year inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory for the Charleston Area as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 11, 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 pertaining to the $PM_{2.5}$ 2002 base year emissions inventory for the Charleston Area 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 27, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	Charleston, WV–1997 $PM_{2.5}$ nonattainment area (Kanawha and Putnam Counties).	11/4/09	12/13/12 *[Insert page number where the document begins]*.	

■ 3. Section 52.2531 is amended by adding paragraph (d) to read as follows:

§ 52.2531 Base year emissions inventory.

* * * * *

(d) EPA approves as a revision to the West Virginia State Implementation Plan the 2002 base year emissions inventory for the Charleston, WV fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the West Virginia Department of Environmental Protection on November 4, 2009. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3), and sulfur dioxide (SO_2).

[FR Doc. 2012–29895 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0077; FRL–9760–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; The 2002 Base Year Emissions Inventory for the Parkersburg-Marietta, WV–OH Nonattainment Area for the 1997 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the West Virginia State Implementation Plan (SIP) revision submitted by the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), on September 9, 2008. The emissions inventory is part of the September 9, 2008 SIP revision that was submitted to meet nonattainment requirements related to the West Virginia portion of the Parkersburg-Marietta, WV–OH nonattainment area (hereafter referred to as the Parkersburg Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on January 11, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0077. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, 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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2012 (77 FR 60087), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of the 2002 base year emissions inventory portion of the West Virginia SIP revision submitted by the State of West Virginia on September 9, 2008.

II. Summary of SIP Revision

The 2002 base year emissions inventory submitted by WVDEP on September 9, 2008 for the Parkersburg Area includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by WVDEP. The year 2002 was selected by WVDEP as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory for the Parkersburg Area can be found in the September 9, 2008 SIP submittal. Specific requirements of the base year inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory for the Parkersburg Area as a revision to the West Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 11, 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 pertaining to the $PM_{2.5}$ 2002 base year emissions inventory for the Parkersburg Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 21, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR Part 52 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	West Virginia portion of the Parkersburg-Marietta, WV–OH nonattainment area.	9/9/08	12/12/12 *[Insert page number where the document begins]*.	52.2531(c)

■ 3. Section 52.2531 is amended by adding paragraph (c) to read as follows:

§ 52.2531 Base year emissions inventory.

* * * * *

(c) EPA approves as a revision to the West Virginia State Implementation Plan the 2002 base year emissions inventory for the Parkersburg-Marietta, WV–OH fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the West Virginia Department of Environmental Protection on September 9, 2008. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, coarse particles (PM_{10}), ammonia (NH_3) and sulfur dioxide (SO_2).

[FR Doc. 2012–29893 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0400; FRL–9756–9]

Approval and Promulgation of State Implementation Plans; State of Wyoming; Regional Haze Rule Requirements for Mandatory Class I Areas Under 40 CFR 51.309

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Wyoming State Implementation Plan (SIP) revisions submitted on January 12, 2011 and April 19, 2012 that address regional haze. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective January 11, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0400. All documents in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if, at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The initials *BART* mean or refer to Best Available Retrofit Technology.

iii. The initials *EGUs* mean or refer to electric generating units.

iv. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

v. The initials NO_X mean or refer to nitrogen oxides.

vi. The initials *PM* mean or refer to particulate matter.

vii. The initials *SIP* mean or refer to State Implementation Plan.

viii. The initials *URP* mean or refer to uniform rate of progress.

ix. The initials *WAQSR* mean or refer to Wyoming Air Quality Standards and Regulations.

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I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by the EPA and citizens under the CAA, also known as being federally enforceable. This action involves the requirement that states have SIPs that address regional haze.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than

December 17, 2007. 40 CFR 51.308(b) and 40 CFR 51.309(c).

Wyoming submitted SIPs addressing regional haze on January 12, 2011 and April 19, 2012 (these superseded and replaced prior SIP submittals dated December 24, 2003, May 7, 2004, and November 21, 2008).

B. Lawsuits

In a lawsuit in the U.S. District Court for the District of Colorado, environmental groups sued us for our failure to take timely action with respect to the regional haze requirements of the CAA and our regulations for the State of Wyoming. As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements of 40 CFR 51.309 for Wyoming by November 14, 2012.[1] We are meeting that requirement with the signing of this notice of final rulemaking.

C. Our Proposal

We signed our notice of proposed rulemaking on May 9, 2012, and it was published in the **Federal Register** on May 24, 2012 (77 FR 30953). In that notice, we provided a detailed description of the various regional haze requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail.

In our proposal, we proposed to approve Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the regional haze rule (RHR) for the mandatory Class I areas under 40 CFR 51.309. EPA proposed that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g), as explained below.

As part of the January 12, 2011 and April 19, 2012 SIPs, the State submitted revisions to the Wyoming Air Quality Standards and Regulations (WAQSR). The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* WAQSR Chapter 14, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the applicable requirements of 40 CFR 51.308 and 40 CFR 51.309. We proposed to approve WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* WAQSR Chapter 10, Section 4, in conjunction with the SIP, implements the requirements for smoke management under 40 CFR 51.309(d)(6). We proposed to approve WAQSR Chapter 10, Section 4.

The State's submitted another SIP revision dated January 12, 2011 that addresses the requirements under 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g) pertaining to best available retrofit technology (BART) for particulate matter (PM) and nitrogen oxides (NO_X) and additional Class I areas, respectively. EPA proposed action on this SIP in a separate notice (77 FR 33022). In addition, the January 12, 2011 and April 19, 2012 submittals we proposed to act on supersede and replace regional haze SIPs submitted on December 24, 2003, May 27, 2004, and November 21, 2008.

D. Public Participation

We requested comments on all aspects of our proposed action and provided a sixty-day comment period, with the comment period closing on July 23, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

In this action, EPA is approving Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the RHR requirements for the mandatory Class I areas under 40 CFR 51.309. EPA taking final action to find that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g).

As part of the January 12, 2011 submittal, the State submitted revisions to WAQSR. The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* We are approving WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* We are approving WAQSR Chapter 10, Section 4. We are also approving Wyoming's April 19, 2012 SIP submittal that contains the pre-trigger emission inventory requirements, which are covered by WAQSR Chapter 14, Section 3—*Emission Inventory.*

III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of Wyoming's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on Wyoming's SIP submittal is based on CAA section 110(k).

We are approving the State's regional haze SIP provisions because they meet the relevant regional haze requirements. The adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO_2 backstop trading program. However, the comments have not convinced us that the State did not meet the requirements of 40 CFR 51.309 that we proposed to approve.

IV. Issues Raised by Commenters and EPA's Responses

A. Backstop Trading Program

EPA has proposed to approve the SO_2 backstop trading program components of the RH SIPs for all participating states and has done so through four separate proposals: For the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); for the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA's proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a consultant's report dated May 25, 2012, and titled: ''Evaluation of Whether the SO_2 Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO_2 Emissions than Source-Specific BART.'' In this section, we address and respond to those comments we identified as being

[1] The State submitted another SIP revision dated January 12, 2011 that addresses the requirements of 40 CFR 51.309(g) and 40 CFR 51.309(d)(4)(vii). We are under a consent decree deadline to take final action on this SIP by December 14, 2012. We will be taking final action on this SIP in a separate action.

consistently submitted and specifically directed to the component of the published proposals dealing with the SO_2 backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (i.e., for the State of Wyoming) will be addressed in the next section where we also address all other comments received.

Comment: The commenter acknowledges that prior case law affirms EPA's regulatory basis for having ''better than BART'' alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and excuse electric generating units (EGUs) from compliance with BART.

Response: The CAA requires BART ''as may be necessary to make reasonable progress toward meeting the national goal'' of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2) (emphasis added). In 1999, EPA issued regulations allowing for alternatives to BART based on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA's regulations provided states with the option of implementing an emissions trading program or other alternative measure in lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A(B)(2) was determined to be reasonable by the D.C. Circuit in *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 659–660 (D.C. Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to be reasonable by the D.C. Circuit in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333, 1340 (D.C. Cir. 2006) (''* * * [W]e have already held in *CEED* that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress.''). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the CAA and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(i)(B).

Comment: The submitted 309 trading program is defective because only three of nine transport states remain in the program. The Grand Canyon Visibility Transport Commission (GCVTC) Report clearly stated that the program must be ''comprehensive.'' The program fails to include the other western states that account for the majority of sulfate contribution in the Class I areas of participating states, and therefore, Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other transport region states compounds the program's deficiencies.

Response: We disagree that the 309 trading program is defective because only three states remain in the program. EPA's regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the 9 Transport Region States will limit the effectiveness of the program in the three states that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that ''certain States * * * may choose'' to comply with the 40 CFR 51.309 requirements and conversely that ''[a]ny Transport Region State [may] elect not to submit an implementation plan'' to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, ''understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309.'' 68 FR 33,769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

We disagree with the commenter's assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating states must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources ''do not account for the majority of sulfate contribution'' at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for SO_2 emissions originating from sources outside these participating states. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan.

Finally, we do not agree with the commenter's characterization of the GCVTC Report, which used the term ''comprehensive'' only in stating the following: ''It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole.'' [2]

It is apparent that the GCVTC recommended comprehensive source coverage to optimize the market trading program. This does not necessitate or even necessarily correlate with geographic comprehensiveness as contemplated by the comment. We note that the submitted backstop trading program does in fact comprehensively include ''many source categories,'' as may also be expected for any intrastate trading program that any state could choose to develop and submit under 40 CFR 51.308(e)(2). As was stated in our proposal, section 51.309 does not require the participation of a certain number of states to validate its effectiveness.

Comment: The submitted 309 trading program is defective because the pollutant reductions from participating states have little visibility benefit in each other's Class I areas. The states that have submitted 309 SIPs are ''largely non-contiguous'' in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating states have little effect on Class I areas in other participating states.

[2] The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

Response: We disagree. The 309 program was designed to address visibility impairment for the sixteen Class I areas on the Colorado Plateau. New Mexico, Wyoming and Utah are identified as Transport Region States because the GCVTC had determined they could impact the Colorado Plateau class I areas. The submitted trading program has been designed by these transport region states to satisfy their requirements under 40 CFR 51.309 to address visibility impairment at the sixteen Class I areas. The strategies in these plans are directed toward a designated clean-air corridor that is defined by the placement of the 16 Class I areas, not the placement of state borders. ''Air sheds'' that do not relate to haze at these Class I areas or that relate to other Class I areas are similarly not relevant to whether the requirements for an approvable 309 trading program are met. As applicable, any transport region state, with Class I areas not on the Colorado Plateau, implementing the provisions of section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I areas other than the 16 Class I areas located within the state. See 40 CFR 51.309(g). More broadly, the state must submit a long-term strategy to address these additional Class I areas as well as those Class I areas located outside the state, which may be affected by emissions from the state. 40 CFR 51.309(g) and 51.308(d)(2). In developing long-term strategies, the Transport Region States may take full credit for visibility improvements that would be achieved through implementation of the strategies required by 51.309(d). A state's satisfaction of the requirements of 51.309(d), and specifically the requirement for a backstop trading program, is evaluated independently from whether a state has satisfied the requirements of 51.309(g). In neither case, however, does the approvability inquiry center on the location or contiguousness of state borders.

Comment: The emission benchmark used in the submitted 309 trading program is inaccurate. The ''better-than-BART'' demonstration needs to analyze BART for each source subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The ''better-than-BART'' demonstration does not comply with the regional haze regulations when it relies on the presumptive SO_2 emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO_2 limits are inappropriate because EPA has elsewhere asserted that ''presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.'' 77 FR 14614 (March 12, 2012).

Response: We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the ''alternative measure has been designed to meet a requirement other than BART.'' See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements ''other than BART'' that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions ''for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.'' See id. The 309 states used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we have explained that states designing alternative programs to meet requirements other than BART ''may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.'' 71 FR 60619 (Oct. 13, 2006).

We also previously stated that ''we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.'' Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing regional emissions reductions for the better than BART demonstration. See 71 FR 60619 (''the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). The submitted SIP revisions from the 309 states have accordingly and appropriately, followed our advice that the presumptions for EGUs in the BART guidelines, generally ''should'' be used for comparisons to the trading program unless the state determines otherwise.

EPA's expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

Comment: The presumptive SO_2 emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, states in the transport region have established or proposed significantly more stringent BART limits for SO_2. Using actual SO_2 emission data for EGUs, SO_2 emissions would be 130,601 tons per year (tpy), not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the SO_2 emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are ''better-than-BART'' would translate to SO_2 emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO_2 emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve ''greater reasonable progress'' than BART.

Response: The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed

controls. Instead, the presumptive SO_2 emission rate served as a necessary simplifying assumption. When the states worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other states (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO_2 controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state's reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, as decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the states at the time they worked to construct the SO_2 trading program. The states did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO_2 emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

Comment: SO_2 emissions under the 309 trading program would be equivalent to the SO_2 emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by ''the clear weight of the evidence,'' that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on ''non-quantitative factors'' in finding that the SO_2 emissions trading program achieves greater reasonable progress.

Response: We recognize that the 2018 SO_2 milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the states who worked together to develop the trading program. If the SO_2 milestone is exceeded, the trading program will be activated. Under this framework, sources that would otherwise be subject to the trading program have incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in SO_2 emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source's allocation. We do not believe that the ''clear weight of the evidence'' determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the SO_2 milestone to equal the BART benchmark. Our determination that the 2018 SO_2 milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of SO_2 as measured against a milestone. Sources will be actively mindful of the participating states' emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests. We note the 2018 milestone constitutes an emissions cap that persists after 2018 unless the trading program can be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

Comment: In proposing to find that the SO_2 trading program achieves greater reasonable progress than BART, EPA's reliance on the following features of the 309 trading program is flawed: Non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is ''a hollow promise'' because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that SO_2 emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO_2 controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO_2 emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their SO_2 emissions in tpy) was lower.

Response: We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it will be activated. Instead, sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be required to secure emission reductions as may be

necessary to meet their emission allocations under the program.

We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for SO_2 unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 40 CFR 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP's use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate SO_2 controls efficiently, this does not mean that an alternative to BART thereby allows, encourages, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future requirements for operation of SO_2 controls.

We also disagree with the commenter's contention that existing programs are equivalent in effect to the emissions cap. EPA's new source review program is designed to permit, not cap, source growth, so long as the national ambient air quality standards and other requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations that are made to meet the definition of BART (40 CFR 51.301). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

Comment: The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program ''if adequately implemented'' will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA's proposed approval of the 309 trading program is ''particularly problematic'' where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress (URP) glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO_2 reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO_2.

Response: We disagree with the issues discussed in this comment. As discussed in other responses to comments, we have found that the State's SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 309 make clear, states have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the URP as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

Comment: The 309 trading program must be disapproved because it does not provide for ''steady and continuing emissions reductions through 2018'' as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three-year intervals. It would be arbitrary and capricious to conclude these reductions are ''steady'' or ''continuous.''

Response: We disagree and find that the reductions required at each milestone demonstrate steady and continuing emissions reductions. The milestones do this by requiring regular decreases. These decreases occur in intervals ranging from one to three years and include administrative evaluation periods with the possibility of downward adjustments of the milestone, if warranted. The interval under which ''steady and continuing emissions reductions through 2018'' must occur is not defined in the regional haze rule. We find the milestone schedule and the remainder of the trading program submitted by Wyoming does in fact reasonably provide for ''steady and continuing emissions reductions through 2018.''

Comment: The WRAP attempts to justify the SO_2 trading program because SO_2 emissions have decreased in the three transport region states relying on the alternative program by 33% between 1990–2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are ''surplus'' to those resulting from programs implemented to meet other CAA requirements.

Response: We did not focus on the WRAP's discussion of early emission reductions in our proposal. However, we do not understand commenter's claim or agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not an issue, because the existence of surplus reductions is studied against other reductions that are realized ''as of baseline date of the SIP.'' The 1990–2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violates 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

Comment: EPA must correct discrepancies between the data presented in the 309 SIPs.[3] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New

[3] This particular comment was not submitted in response to the proposal to approve Albuquerque's 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.

Mexico regional haze SIP proposal shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and ''re-notice'' a new proposed rule containing the correct information.

Response: We agree that there are discrepancies in the numbers in Table 1 of the proposed notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming, and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column in the table below. The discrepancies come from New Mexico using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah, and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress (PRP) case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the ''PRP18a'' emission inventory. The PRP18a emission inventory is a predicted 2018 emission inventory with all known and expected controls as of March 2007. The preliminary reasonable progress case (''PRP18b'') used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in our proposed notices for Wyoming, Utah, and Albuquerque to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls ''on the books'' as of March 2009.

Class I area	State	2018 Preliminary reasonable progress PRP18a case (deciview)	2018 Preliminary reasonable progress PRP18b case (deciview)
Grand Canyon National Park	AZ	11.3	11.1
Mount Baldy Wilderness	AZ	11.4	11.5
Petrified Forest National Park	AZ	12.9	12.8
Sycamore Canyon Wilderness	AZ	15.1	15.0
Black Canyon of the Gunnison National Park Wilderness	CO	9.9	9.8
Flat Tops Wilderness	CO	9.0	9.0
Maroon Bells Wilderness	CO	9.0	9.0
Mesa Verde National Park	CO	12.6	12.5
Weminuche Wilderness	CO	9.9	9.8
West Elk Wilderness	CO	9.0	9.0
San Pedro Parks Wilderness	NM	9.8	9.8
Arches National Park	UT	10.9	10.7
Bryce Canyon National Park	UT	11.2	11.1
Canyonlands National Park	UT	10.9	10.7
Capitol Reef National Park	UT	10.5	10.4
Zion National Park	UT	13.0	12.8

We are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that the SIP submitted by Wyoming contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico's Table 1, column four compared to the other participating states' notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that Wyoming's SIP adequately projects the improvement in visibility for purposes of Section 309.

B. General Comments

Comment: We received comments from PacifiCorp and New Mexico Environment Department supporting our proposed approval of Wyoming's 309 SIP.

Response: We acknowledge the commenters' support of our proposed rulemaking.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 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, Sulfur oxides, Incorporation by reference.

Dated: November 13, 2012.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 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 ZZ—Wyoming

■ 2. Section 52.2620 is amended by:

■ a. Amending the table in paragraph (c)(1) under Chapter 10 by adding an entry for Section 4.

■ b. Amending the table in paragraph (c)(1) by adding Chapter 14 consisting of entries for Section 2 and Section 3.

■ c. Amending the table in paragraph (e) by adding entry ''XX'' at the end of the table.

The additions read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanation
* *	*	*	* *	*
		Chapter 10		
* *	*	*	* *	*
Section 4	Smoke Management	2/17/2005, 4/5/2005	12/12/2012 [Insert FR page number where document begins].	
* *	*	*	* *	*
		Chapter 14		
* *	*	*	* *	*
Section 2	Western Backstop Sulfur Dioxide Trading Program.	2/27/2008, 5/7/2008	12/12/2012 [Insert FR page number where document begins].	
Section 3	Sulfur Dioxide Milestone Inventory.	2/27/2008, 5/7/2008	12/12/2012 [Insert FR page number where document begins].	

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/adopted date	EPA approval date and citation [3]	Explanations
* *	*	* *	*	*
XX. Wyoming State Implementation Plan for Regional Haze for 309.	Statewide	Submitted: 1/12/2011	12/12/2012 [Insert **Federal Register** page number where the document begins].	

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2012–29985 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0669; FRL–9369–3]

Bacillus subtilis Strain QST 713 Variant Soil; Amendment to an Exemption From the Requirement of a Tolerance for Bacillus subtilis Strain QST 713 To Include Residues of Bacillus subtilis Strain QST 713 Variant Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing exemption from the requirement of a tolerance for residues of the *Bacillus subtilis* strain QST 713 in or on all food commodities by including residues of *Bacillus subtilis* strain QST 713 variant soil. Agraquest, Inc. submitted a petition to the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing exemption from the requirement of a tolerance for *Bacillus subtilis* strain QST 713 to include residues of products containing *Bacillus subtilis* strain QST 713 variant soil in or on all agricultural commodities. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain QST 713 variant soil under the FFDCA.

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 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–2011–0669, 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: Michael Glikes, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6231; email address: *glikes.michael@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 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 the EPA, you must identify docket ID number EPA–HQ–OPP–2011–0669 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 11, 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 CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by the EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0669, 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. Background and Statutory Findings

In the **Federal Register** of September 7, 2011 (76 FR 55329) (FRL–8886–7), the EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F7896) by Agraquest, Inc., 1540 Drew Ave., Davis, CA 95618. The petition requested that 40 CFR part 180.1209 be amended by including residues of *Bacillus subtilis* strain QST 713 variant soil. This notice referenced a summary of the petition prepared by the petitioner, Agraquest, Inc., which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows the EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if the EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require 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 * * *.'' Additionally, FFDCA section 408(b)(2)(D) requires that 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.''

The EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, the EPA determines the toxicity of pesticides. Second, the EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), the EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. The EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Bacillus subtilis is a rod-shaped, gram-positive, aerobic flagellar bacterium that is ubiquitous in nature and has been recovered from water, soil, air, and decomposing plant residues (Ref 1.). The bacterium produces an endospore that allows it to endure extreme conditions of heat and desiccation in the environment (Ref. 1). *Bacillus subtilis* is not considered toxic or pathogenic to humans, animals, or plants (Ref. 2). Several strains of *Bacillus subtilis* are used predominantly as fungicidal active ingredients in various pesticides registered with the EPA.

In 2000, the EPA first registered *Bacillus subtilis* strain QST 713 as a pesticide active ingredient. EPA described the nature and toxicological profile of *Bacillus subtilis* strain QST 713 in the **Federal Register** of July 5, 2000 (65 FR 41365) (FRL–6555–3) as the basis for establishing the tolerance exemption for *Bacillus subtilis* strain QST 713 in or on all food commodities at 40 CFR 180.1209. A battery of tests, as described in that **Federal Register** citation, determined that *Bacillus subtilis* strain QST 713 is not pathogenic and has no significant toxicity. The petitioner is now requesting that this tolerance be amended to include residues of *Bacillus subtilis* strain QST 713 variant soil. *Bacillus subtilis* strain QST 713 variant soil is a naturally occurring variant of *Bacillus subtilis* strain QST 713 and is present in products containing the active ingredient *Bacillus subtilis* strain QST 713, although at low levels (Ref. 3). The variant strain is distinguished from the parent strain by the presence of the swrA gene, which is an essential gene for *Bacillus* to move over solid substances, and by a phenotype associated with enhanced biofilm formation, growth promotion and disease protection (Ref. 3). Based on its review of the variant and studies submitted by the petitioner, EPA concludes that the variant and the parent strain are substantially similar for the purposes of assessing toxicity, pathogenicity and infectivity (Ref. 3).

The applicant, Agraquest, Inc., cited or submitted adequate mammalian toxicology data and information to support the exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain QST 713 variant soil in or on all raw agricultural commodities. These data are cited and described in the EPA's March 2012 Bacillus subtilis Final Registration Review Decision (Ref. 1). In addition, Agraquest submitted an acute injection toxicity/pathogenicity study *(OCSPP Guideline 885.3200; MRID 48530909)* that showed that *Bacillus subtilis* strain QST 713 variant soil TGAI was not toxic, infective, or pathogenic to rats when injected intravenously at a dose of 6.6×10^8 colony forming units.

The applicant reported that no hypersensitivity incidents occurred during research, development, or testing of *Bacillus subtilis* strain QST 713 variant soil. Acceptable Tier I mammalian toxicology data and information support registration of the proposed end-use product, Serenade Soil DPZ. In light of the results of the acute toxicity/pathogenicity data and the absence of hypersensitivity incidents, the EPA did not require testing at higher tiers (i.e., Tiers II and III).

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food exposure.* Due to the ubiquitous nature of the *Bacillus subtilis* and the concentrations of *Bacillus subtilis* and other closely related *Bacillus* species that already exist in the environment, the EPA expects human exposure to *Bacillus subtilis* strain QST 713 variant soil resulting from the proposed pesticidal uses will be no greater than existing human exposure to background levels of *Bacillus subtilis.* The EPA in its registration review decision (Ref. 1) concluded ''the risk posed to adults, infants, and children is likely to be minimal because of the low acute oral toxicity/pathogenicity

potential of *Bacillus subtilis* strain QST 713.'' Based on the EPA's evaluation of the *Bacillus subtilis* strain QST 713 data and the EPA's conclusion that *Bacillus subtilis* strain QST 713 and *Bacillus subtilis* strain QST 713 variant soil are substantially similar for the purposes of assessing toxicity, pathogenicity, and infectivity (Ref. 3), no adverse effects from dietary exposure to *Bacillus subtilis* strain QST 713 variant soil from its pesticidal uses are expected (see Unit III.).

2. *Drinking water exposure.* Because *Bacillus subtilis* is ubiquitous in the environment, exposure to the microbe through drinking water may already be occurring and likely will continue (Ref. 3). EPA expects exposures to *Bacillus subtilis* strain QST 713 variant soil to be not much greater than background levels because the proposed use patterns are soil directed and/or soil incorporated, thereby limiting contact with surface water by drift and runoff. Furthermore, ground water is not expected to have significant exposure to *Bacillus subtilis* strain QST 713 variant soil since, like other microorganisms, this microbial pesticide would likely be filtered out by the particulate nature of many soil types. If residues of *Bacillus subtilis* strain QST 713 variant soil were to be transferred to surface or ground waters that are intended for eventual human consumption (e.g., through spray drift or runoff) and directed to wastewater treatment systems or drinking water facilities, *Bacillus subtilis* strain QST 713 variant soil likely would not survive the conditions water is subjected to in such systems or facilities, including chlorination, pH adjustments, filtration, and/or occasional high temperatures. As discussed in the EPA's *Bacillus subtilis* Case 6012, Final Registration Review Decision (Ref. 1), intake of low levels of ubiquitous *Bacillus subtilis* in drinking water may occur, but exposure would represent a minimal risk due to the low toxicity of the strain. Similarly, exposure to other strains of *Bacillus subtilis* would not represent a greater risk. It is reasonable to conclude, based on the similarity in product composition and production, measured physical/chemical, and pathogenicity/infectivity toxicity data, that the risk from any potential exposure to *Bacillus subtilis* strain QST 713 variant soil resulting from the proposed pesticidal use would be minimal and equivalent to the risk from exposure to *Bacillus subtilis* strain QST 713.

B. Other Non-occupational Exposures

The use sites proposed for products containing *Bacillus subtilis* strain QST 713 variant soil include both agricultural and residential garden sites, so the EPA expects there to be some non-occupational exposure as a result of the application of this pesticide. Given *Bacillus subtilis* strain QST 713 variant soil's natural occurrence in soil, the EPA determined that non-occupational exposure to the bacterium likely is already occurring (Ref. 3). Additional exposure to the microorganism, due to pesticidal applications, is likely to occur but is not expected to exceed EPA's level of concern, particularly in light of available data that demonstrate *Bacillus subtilis* strain QST 713 is not toxic (acute dermal toxicity and acute pulmonary toxicity/pathogenicity), non-irritating (primary dermal irritation), and not pathogenic (acute pulmonary toxicity/pathogenicity) and the EPA's conclusion that *Bacillus subtilis* strain QST 713 and *Bacillus subtilis* strain QST 713 variant soil are substantially similar for the purposes of assessing toxicity, pathogenicity, and infectivity (Ref. 3). Based on the toxicity information submitted to the EPA, aggregate exposure to *Bacillus subtilis* strain QST 713 variant soil would be below the levels in the safety testing conducted on *Bacillus subtilis* strain QST 713 and would not represent an undue risk due to the lack of residues of toxicological concern and the low toxicity of the active ingredient. The EPA concluded that non-dietary exposures to the general population, including infants and children, would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

V. 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.''

Bacillus subtilis strain QST 713 variant soil does not operate via a toxic mode of action and thus does not share a common mechanism of toxicity with any other substances. Therefore, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (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 that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor. 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.

Based on the information discussed in Unit III.B., EPA concludes that there are no threshold effects of concern to infants, children, or adults when *Bacillus subtilis* strain QST 713 variant soil is used as labeled in accordance with good agricultural practices. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Moreover, based on the same data and EPA analysis as presented directly above, the Agency is able to conclude that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Bacillus subtilis* strain QST 713 variant soil when it is used as labeled and in accordance with good agricultural practices. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm from this bacterium in its use as an antifungal agent via dietary exposure since the microorganism is non-toxic, non-pathogenic, and not infective. This conclusion is supported by the data on the substantially similar strain *Bacillus subtilis* strain QST 713, public literature and EPA's *Bacillus subtilis* Case 6012, Final Registration Review Decision (Ref. 1). EPA concludes that there is a reasonable certainty of no harm to infants and children from aggregate exposure to *Bacillus subtilis* strain QST 713 variant soil.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, the EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. The 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. The 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.

The Codex has not established a MRL for *Bacillus subtilis* strain QST 713 variant soil.

VIII. Conclusions

The EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus subtilis* strain QST 713 variant soil. Therefore, the EPA is amending the tolerance exemption for *Bacillus subtilis* strain QST 713 to include residues of *Bacillus subtilis* strain QST 713 variant soil in or on all food commodities when used in accordance with good agricultural practices.

IX. References

1. U.S. EPA. 2010. *Bacillus subtilis* Final Registration Review Decision. Case 6012. March 2010.

2. U.S. EPA. 1997. *Bacillus subtilis* Final Risk Assessment.

3. U.S. EPA. July 11, 2012. Memorandum from Dr. Ibrahim S. Barsoum and Dr. John L. Kough to Michael Glikes: Review of Product Chemistry and Acute Toxicity Studies for Section 3 Registration of a new TGAI, *Bacillus subtilis* strain QST variant soil, and a new EP, Serenade soil DPZ (EPA Reg. No. 69592–EI).

X. Statutory and Executive Order Reviews

This final rule amends an exiting tolerance 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 exemption from 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).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the 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 26, 2012.

Steven Bradbury,

Director, 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. Revise § 180.1209 to read as follows:

§ 180.1209 Bacillus subtilisstrain QST 713 and strain QST 713 variant soil; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticides *Bacillus subtilis* strain QST 713 and strain QST 713 variant soil when used in or on all food commodities.

[FR Doc. 2012–29903 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0326; FRL–9371–5]

Spirodiclofen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation modifies currently established tolerances for residues of spirodiclofen, 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutanoate in or on apple, wet pomace and grape, raisin to 2.4 and 6.0 parts per million (ppm) respectively, and deletes the tolerance for grape juice. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 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–2012–0326, 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: Rita Kumar, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; email address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0326, 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 11, 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–2012–0326, 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 July 25, 2012 (77 FR 43562) (FRL–9353–6), 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 1F7952) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.608 be amended by modifying tolerances for residues of the insecticide spirodiclofen, 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutanoate, in or on apple, wet pomace and grape, raisin from 2.0 and 4.0 parts per million (ppm) respectively, to 2.4 and 6.0 ppm respectively, and by deleting the tolerance for grape juice. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

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 spirodiclofen including exposure resulting from the

tolerances established by this action. EPA's assessment of exposures and risks associated with spirodiclofen follows.

In 2005, EPA assessed the use of spirodiclofen on citrus fruit, grape, pome fruit, stone fruit, and tree nut crops and reviewed the residue chemistry data submitted in support of these uses. Apple and grape processing studies were required as conditional to these registrations. These processing studies were subsequently submitted by Bayer CropScience, and reviewed by the Agency in a memo dated October 25, 2007, posted to docket EPA–HQ–OPP–2012–0326. In this memo, EPA concluded that the tolerances for wet apple pomace and raisin grape need to be revised as indicated above, and the tolerance for grape juice is no longer necessary.

In the most recent spirodiclofen tolerance rulemaking published in the **Federal Register** of May 5, 2010 (75 FR 24428) (FRL–8820–4), EPA assessed risk from aggregate exposure to spirodiclofen assuming that exposure occurred in wet apple pomace and raisins at the levels of the revised wet apple pomace and raisin grape tolerances. In that action, EPA determined that aggregate risk from exposure to spirodiclofen was safe. Based upon the 2010 spirodiclofen rulemaking and the other information discussed above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to spirodiclofen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, a liquid chromatography/mass spectrometry (LC/MS/MS) method, is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for spirodiclofen.

V. Conclusion

Therefore, the established tolerances for residues of spirodiclofen, 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutanoate, in or on apple, wet pomace and grape, raisin are amended from 2.0 and 4.0 ppm to 2.4 and 6.0 ppm respectively, and the tolerance for grape juice is deleted.

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 30, 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 § 180.608 revise paragraph (a)(1) introductory text; in the table in paragraph (a)(1) remove the entry for ''Grape juice,'' and revise the entries for

''Apple, wet pomace'' and ''Grape, raisin'' to read as follows:

§ 180.608 Spirodiclofen; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of spirodiclofen, including its metabolites and degradates, in or on the commodities listed below. Compliance with the following tolerance levels is to be determined by measuring only spirodiclofen, 3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutanoate.

Commodity	Parts per million
* * * * *	
Apple, wet pomace	2.4
* * * * *	
Grape, raisin	6.0
* * * * *	

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[FR Doc. 2012–29902 Filed 12–11–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0099; FRL–9373–3]

Flubendiamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation modifies tolerances for residues of flubendiamide in or on multiple food commodities which are identified, and discussed in detail later in this document. Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.) requested these tolerances, and revisions to tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 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–2007–0099, 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: Carmen Rodia, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–0029; email address: *rodia.carmen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0099 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 11, 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–2007–0099, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 23, 2012 (77 FR 30481) (FRL–9347–8), 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 2F7981) by Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.), P.O. Box 12014, Research Triangle Park, NC 27709–2014. The petition requested that the established tolerances listed in 40 CFR 180.639 for residues of the insecticide flubendiamide, N^2-[1, 1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[l, 2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on Apple, wet pomace be increased from 2.0 parts per million (ppm) to 5.0 ppm; and Fruit, pome, group 11 be increased from 0.70 ppm to 1.5 ppm. That document

referenced a summary of the petition prepared by Bayer CropScience LP in c/o Nichino America, Inc. (U.S. subsidiary of Nihon Nohyaku Co., Ltd.), the registrant, which is available in the docket, *http://www.regulations.gov.* There were no substantive comments received in response to the notice of filing.

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 flubendiamide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flubendiamide 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.

Flubendiamide has a low acute toxicity via the oral and dermal routes of exposure. Though it is a slight irritant to the eye, flubendiamide is not a skin irritant and it is not a skin sensitizer under the conditions of the guinea pig maximization test.

In the mammalian toxicology database, the primary target organ of flubendiamide exposure is the liver, with secondary effects reported in the thyroid and kidney at equivalent or higher doses; no-observed-adverse-effect-levels (NOAELs) established to protect for liver toxicity are protective of effects seen in the thyroid and kidney. Adverse adrenal effects were also noted in the dog.

Buphthalmia (eye enlargement), opacity, and exophthalmus with hemorrhage appearing only in infancy, were observed in rat offspring in the reproductive and developmental neurotoxicity (DNT) studies. There was no clear dose-response relationship for this effect, but ocular toxicity was noted in three rat studies and accompanied by histopathological findings of synechia, hemorrhage, keratitis, iritis, and cataracts. Therefore, bupthalmos is considered an effect of treatment. No evidence of cancer was seen for flubendiamide in cancer bioassays in mice and rats. Flubendiamide was also negative in mutagenicity testing. Accordingly, flubendiamide was classified as ''Not Likely To Be Carcinogenic to Humans.''

More detailed information on the studies received and the nature of the adverse effects caused by flubendiamide as well as the NOAEL and the lowest-observed-adverse effect-level (LOAEL) from the toxicity studies can be found in the document entitled, ''Flubendiamide: Human Health Risk Assessment for Proposed Uses on Corn, Cotton, Tobacco, Tree Fruit, Tree Nuts, Vine Crops and Vegetable Crops,'' dated April 3, 2008, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES.** Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on pages 65–70 of 105.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/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 flubendiamide used for human risk assessment is shown in the following Table 1.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUBENDIAMIDE 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, 13–49 years of age).	NOAEL = 99.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = 0.995 mg/kg/day. aPAD = 0.995 mg/kg/day	2-generation reproduction, 1-generation reproduction, and DNT studies as three co-critical studies (using 1,200 ppm [99.5 mg/kg/day] from the DNT as the highest NOAEL for eye effects and a LOAEL from the 1-generation reproduction study of 127 mg/kg/day), based on buphthalmia (enlargement of eyes), ocular opacity, retinal degeneration, hemorrhage, cataract, and atrophy of the optic nerve.
Acute Dietary (General Population, including infants and children).			

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUBENDIAMIDE 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
Chronic Dietary (General Population, including infants and children).	NOAEL = 2.4 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.024 mg/kg/day. cPAD = 0.024 mg/kg/day	2-year rat cancer study, 1-year chronic dog study, and 1-year chronic rat study as three co-critical studies, using the chronic rat study NOAEL of 50 ppm (2.4 mg/kg/day) with LOAEL from the 2-year cancer rat study of 33.9 mg/kg/day, based on liver toxicity, fatty change, hypertrophy, ↑ liver weight and ↑ Gamma Glutamyl Transferase (GGT).
Cancer (oral, dermal, and inhalation).	Classification: Not likely to be carcinogenic to humans based on negative genotoxicity and carcinogenicity in long-term cancer studies in rats and mice.		

FQPA SF = Food Quality Protection Act Safety Factor. milligrams/kilograms/day = mg/kg/day. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). Reference dose. Population adjusted dose. (a = acute; c = chronic). DNT = developmental neurotoxicity test.

A summary of the toxicological endpoints for flubendiamide used for human risk assessment can be found in the document entitled, ''Flubendiamide: Human Health Risk Assessment for Proposed Uses on Corn, Cotton, Tobacco, Tree Fruit, Tree Nuts, Vine Crops and Vegetable crops,'' dated April 3, 2008, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on pages 37–38 of 105.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flubendiamide, EPA considered exposure under the petitioned-for tolerances as well as all existing flubendiamide tolerances in 40 CFR 180.639. Acute and chronic aggregate dietary (food and drinking water) exposure and risk assessments were conducted using the Dietary Exposure Evaluation Model, Version 3.16—Food Commodity Intake Database (DEEMFCID™) which uses food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat In America (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. The analyses were performed to support Section 3 requests for increases in the tolerances for pome fruit and wet apple pomace 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 flubendiamide. In estimating acute dietary exposure, EPA used DEEMFCID™ along with food consumption information from the USDA's 2003–2008 NHANES/WWEIA survey. As to residue levels in food, for the acute assessment, the modeled exposure estimates are based on tolerance level residues, assuming 100% of crops were treated. In addition, experimental processing (where available) factors were assumed for both registered and requested crop uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's 2003–2008 NHANES/WWEIA survey. EPA assumed a subset of the currently registered crops contains residues at the average residue levels found in the crop field trials. For the newly proposed crops, livestock commodities, and the remaining currently registered crops, EPA assumed tolerance level residues. In addition, experimental processing factors were used where available. Finally, EPA assumed 100% of crops were treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flubendiamide should be classified as ''Not Likely To Be Carcinogenic to Humans.'' As a result, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary for flubendiamide, and was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require, pursuant to FFDCA section 408(f)(1), that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used Tier II screening level water exposure models in the dietary exposure analysis and risk assessment for flubendiamide in drinking water. These simulation models take into account data on the physical, chemical and fate/transport characteristics of flubendiamide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefedl/models/water/index.htm.*

Flubendiamide is persistent and potentially mobile in terrestrial and aquatic environments. These fate properties suggest that it has a potential to move into surface water and ground water. Potential residues in drinking water were included in the acute and chronic dietary analyses based on surface water results from the Tier II, Pesticide Root Zone Modeling/Exposure Analysis Modeling System(PRZM/EXAMS) Index Reservoir model as these values were higher than the groundwater estimates from the Screening Concentration in Ground Water (SCI–GROW) model. Estimated acute and chronic drinking water values were 24.57 parts per billion (ppb) and 11.46 ppb, respectively.

A summary of the dietary exposure from drinking water for flubendiamide used for human risk assessment can be found in the documents entitled, ''Flubendiamide: Acute and Chronic Aggregate Dietary (Food and Drinking

Water) Exposure Assessment for the Increased Tolerance on Pome Fruit,'' dated September 11, 2012, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2007–0099. Double-click on the document to view the referenced information on pages 2–4 of 29.

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). Flubendiamide is not registered for any specific use patterns that would result in residential exposure.

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 flubendiamide to share a common mechanism of toxicity with any other substances, and flubendiamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flubendiamide 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.* While both the rat and rabbit developmental studies did not identify teratogenic effects and showed no evidence of increased prenatal susceptibility, adverse eye effects (eye enlargement) were noted in postnatal rat pups older than 14 days in multiple studies (the 2-generation reproduction and 1-generation supplemental studies). Additionally, the DNT study reported eye effects appearing in some offspring between lactation days 14 and 42, even though exposure stopped at lactation day 21, indicating a possible delay (a latent response) from the time of last exposure to onset of bupthalmos. These eye effects did not occur in adult rats. Since the iris and chamber angle are differentiating and specializing into definite structures during postnatal days 5 to 20, neonatal rats appear to have an increased susceptibility to flubendiamide exposure as compared to adults.

In addition to the reported eye effects in the DNT study, there was also a balanopreputial separation (separation of the prepuce (foreskin) from the glans penis *(balanus))* delay. While this effect is generally considered adverse per se, it is not assumed to be a developmental effect from *in utero* exposure. Here, delayed balano-preputial separation is considered secondary to reduced postnatal pup body weight as a result of postnatal exposure. Furthermore, it was resolved within the appropriate age range of puberty and no effects on reproductive function were observed in the multigeneration study in rats. Delayed balanopreputial separation was seen only at doses causing maternal toxicity and is not more severe than the maternal effects of hepatotoxicity seen at the common pup/maternal LOAEL of the DNT study. Accordingly, the delayed balanopreputial separation seen in the DNT study does not cause concern for increased sensitivity to the young for flubendiamide.

Human microsomes have been shown to be capable of approximately 4 times higher hydroxylation rates of flubendiamide as compared to female mouse microsomes and may be able to efficiently metabolize and excrete flubendiamide, preventing accumulation of the parent compound. It remains unclear whether the ability to metabolize and clear the parent compound is the only requirement to avoid ocular toxicity. Due to the potential ocular toxicity, this perinatal ocular effect is considered in the human health risk assessment for flubendiamide.

3. *Conclusion.* EPA evaluated the quality of the toxicity and exposure data and, based on these data, has determined that the safety of infants and children would be adequately protected if the FQPA SF were reduced to lX. That decision is based on the following findings:

i. The toxicology database for flubendiamide is complete with the exception of a subchronic neurotoxicity study which is now a new data requirement under 40 CFR part 158; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Flubendiamide is not a neurotoxic chemical based on neurotoxicity assessments conducted in the acute and developmental neurotoxicity studies and as part of the chronic rat study. Additionally, in several short-term studies in rats (subacute and subchronic feeding, plaque-forming cell assay, one-generation pilot, developmental toxicity) no neurobehavioral signs were observed at doses up to and exceeding the limit dose; therefore, an additional database uncertainty factor is not needed to account for potential neurotoxicity.

ii. Although susceptibility was identified in the toxicological database (eye effects), the selected regulatory PODs (which are based on clear NOAELs) are protective of these effects; therefore, the human health risk assessment is protective.

iii. There are no residual uncertainties identified in the exposure databases and the exposure assessment is protective. The acute dietary food exposure assessment utilizes tolerance-level residues, the chronic dietary food exposure assessment utilizes, in part, average residue levels found in the crop field trials/livestock commodities and, in part, tolerance-level residues. Both assessments assume that 100% of crops with requested or existing uses of flubendiamide are treated. The drinking water assessment generated estimated drinking water concentrations (EDWCs) using models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations. The highest relevant EDWCs were used in the dietary (food and drinking water) exposure assessment. By using these screening-level exposure assessments in the acute and chronic dietary (food and drinking water) assessments, risk is not underestimated for flubendiamide.

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 population adjusted dose (aPAD) and chronic population adjusted dose (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.

For this action, there is potential exposure to flubendiamide from food and drinking water, but not from residential use sites (as there are no proposed or existing residential uses for flubendiamide). Since hazard was identified via the oral route over both the acute and chronic duration, the aggregate risk assessments considers exposures from food and drinking water consumed over the acute and chronic durations.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, EPA has concluded that acute dietary exposure from food and water to flubendiamide will utilize 3.1% of the aPAD for the general U.S. population and 5% of the aPAD for the most highly exposed population subgroup, children aged 1 to 2 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic dietary exposure to flubendiamide from food and water will utilize 20% of the cPAD for the general U.S. population and 58% of the cPAD for the most highly exposed population subgroup, children aged 1 to 2 years old. There are no proposed or existing residential uses for flubendiamide. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flubendiamide is not expected.

3. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of cancer in cancer bioassays in mice and rat, flubendiamide is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Liquid Chromatography with tandem Mass Spectrometry detection ((LC/MS/MS), Methods 00816/M002 and 00912) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Codex, Canadian or Mexican MRLs for residues of flubendiamide in/on apple, wet pomace or fruit, pome, group 11 commodities.

C. Revisions to Petitioned-for Tolerances

The Agency's *''Guidance for Setting Pesticide Tolerances Based on Field Trial Data,''* was utilized for determining appropriate tolerance levels for many raw agricultural commodities (RACs) which showed quantifiable residues in or on samples that were treated according to the proposed use patterns. The following revisions to tolerance levels were made:

The recommended tolerance levels are the same values as in the petition. The Organization of Economic Coordination and Development (OECD) calculation procedure was utilized to derive the tolerance estimate for pome fruit based on all apple field trial data and all pear field trial data (D386262, S. Funk, 04/01/2011). The new apple pomace tolerance is derived from the highest average apple field trial result (1.21 ppm) and the processing factor for conversion of apples to apple pomace (3.6X) from a previously reviewed study. The proposed increases in tolerances for pome fruit and wet apple pomace have no effect on the dietary burdens of livestock. Therefore, the established tolerances for meat, milk, poultry, and eggs are adequate.

V. Conclusion

Therefore, the established tolerances for residues of flubendiamide, N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamidein or on apple, wet pomace is being increased to 5.0 ppm. The established tolerance for fruit, pome, group 11 is being increased to 1.5 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions

of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 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. Section 180.639 is amended as follows:

■ a. In paragraph (a)(1) revise the introductory text and the entries for ''apple, wet pomace,'' and ''fruit, pome, group 11.''

■ b. Revise the introductory text to paragraph (d).

The revised text reads as follows:

§ 180.639 Flubendiamide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of flubendiamide, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only flubendiamide N^2-[1, 1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N^1-[2-methyl-4- [1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide, in or on the following commodities:

Commodity	Parts per million
* * * * *	
Apple, wet pomace	5.0
* * * * *	
Fruit, pome, group 11	1.5

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of flubendiamide, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only flubendiamide N2-[1, 1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo-N1-[2-methyl-4- [1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1, 2-benzenedicarboxamide, in or on the following commodities:

* * * * *

[FR Doc. 2012–29979 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0541; FRL–9360–3]

Fenpyroximate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide fenpyroximate in or on multiple commodities identified and discussed later in this document. In addition, this regulation removes established tolerances for certain commodities/groups superseded by this action. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 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–2011–0541, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, 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: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@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. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/*

text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0541 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 11, 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 that does not contain any 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 a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0541, 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), Mail Code: 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 Wednesday, September 7, 2011 (76 FR 55329) (FRL–8886–7), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7881) by IR–4, Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540; and on Wednesday, May 2, 2012 (77 FR 25954) (FRL–9346–1) for PP 1F7902 by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petitions requested that 40 CFR 180.566 be amended by establishing tolerances for residues of the insecticide fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methyene]amino]oxy]methyl]benzoate and its Z-isomer, (*Z*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene]amino]oxy] methyl]benzoate, in or on avocado at 0.2 parts per million (ppm); bean, snap at 0.4 ppm; canistel at 0.2 ppm; cucumber at 0.25 ppm; fruit, citrus, group 10–10 at 0.6 ppm; fruit, pome, group 11–10 at 0.4 ppm; mango at 0.2 ppm; papaya 0.2 ppm; sapodilla at 0.2 ppm; sapote, black at 0.2 ppm; sapote, mamey at 0.2 ppm; star apple at 0.2 ppm; tea, plucked leaves at 15 ppm; and vegetable, fruiting, group 8–10 at 0.2 ppm; corn, field, grain at 0.02 ppm; corn, field, forage/silage at 2.0 ppm; corn, field, stover at 7.0 ppm; corn, field, aspirated fractions at 2.0 ppm; corn, pop, grain at 0.02 ppm; corn, pop, forage/silage at 2.0 ppm; corn, pop, stover at 7.0 ppm; and corn, pop, aspirated fractions at 2.0 ppm. In addition, petition 1E7881 proposed to remove established tolerances in or on the raw agricultural commodities/groups: Fruit, citrus, group 10 at 0.60 ppm; fruit, pome, group 11 at 0.40 ppm; and vegetable, fruiting, group 8 at 0.20 ppm. The notices referenced a summary of the respective petition prepared by Nichino America, Inc., the registrant, available in the docket, *http://www.regulations.gov.* There were no comments received in response to these notices of filing. Based upon review of the data supporting the petitions, EPA is establishing tolerance levels for certain commodities other than the proposed level. The reasons for these changes are explained in Unit IV.C.

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 fenpyroximate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenpyroximate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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.

Fenpyroximate induced moderate acute oral and inhalation toxicity in rats. It exhibited low dermal acute toxicity and was neither a skin nor eye irritant. Fenpyroximate was a slight to moderate sensitizer by the maximization test method. Subchronic and chronic oral exposures to fenpyroximate resulted in overall systemic toxicity (no specific target organ/tissue identified). The most sensitive species tested was the dog. The effects reported in the dog included slight bradycardia, deficits in food consumption, body weight, body-weight gain, and an increased incidence of emesis and diarrhea. Emaciation and torpor (sluggish inactivity) were reported in female dogs at lower dose levels than males. The highest dose tested in the dog (50 milligrams/kilogram/day (mg/kg bw/day)) resulted in first- and second-degree heart block, increased urea concentration, decreased glucose, and altered plasma electrolyte levels among other signs of toxicity. In subchronic and chronic studies with rats, the primary effect was decreased body-weight gain in both sexes with hematological changes (e.g., higher counts of red blood cells) at higher doses.

In a rat prenatal developmental toxicity study, a fenpyroximate dose level that marginally affected maternal body weight and food consumption also resulted in an increased litter incidence of increased thoracic ribs, indicating increased prenatal (qualitative) susceptibility. In the rabbits, there no developmental effects reported at the levels tested. In the rat two-generation reproductive toxicity study, there was no indication of increased pre- or post-natal susceptibility; maternal toxicity (decreased body-weight) and offspring toxicity (decreased lactational weight gain in both generations) occurred at the same dose. Reproductive parameters were not affected.

Acute and subchronic neurotoxicity studies in the rat show no evidence that fenpyroximate specifically targets the nervous system. In the acute neurotoxicity study, neurotoxicity signs such as decreases in motor activity occurred in the presence of other effects including decreases in body weight and food consumption, and in the absence of neuropathology. Similar results were noted in a delayed acute neurotoxicity study in the hen where no effects (neurotoxic or otherwise) were reported. The results of the rat subchronic neurotoxicity study did not indicate any neurotoxicity-specific effects; deficits in body weight and food consumption were the main effects reported. Effects reported in a rat immunotoxicity study were limited to decreased body-weight gain, indicating the fenpyroximate does not directly target the immune system.There is no evidence of carcinogenic potential for fenpyroximate based on the results of carcinogenicity studies via the oral route in either the rats or mice resulting in the carcinogenicity classification of ''not likely'' to be carcinogenic to humans. Genotoxicity studies including mutagenicity did not demonstrate any genotoxic potential resulting from fenpyroximate exposure.

Specific information on the studies received and the nature of the adverse effects caused by fenpyroximate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Fenpyroximate. Human-Health Risk Assessment for (1) Proposed Section 3 Uses on Cucumber, Snap Bean, Avocado, Black Sapote, Canistel, Mamey Sapote, Mango, Papaya, Sapodilla, Star Apple, Corn (Field, Pop, Silage, and Grown for Seed); (2) Updated Tolerances for Citrus Fruit-Group 10–10, Pome Fruit Group 11–10, and Fruiting Vegetable Group 8–10; (4) the Establishment of a Tolerance on Imported Tea; (3) Increase in Maximum Seasonal Application Rate on Mint; and (4) Proposed Label Amendment to Include Aerial Applications to Existing Uses on Citrus in Texas, Melons, Fruiting Vegetables, and Snap Beans,'' dated April 16, 2012 at p. 32 in docket ID number EPA–HQ–OPP–2011–0541–0005.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/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 fenpyroximate used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENPYROXIMATE 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 = 5.0 mg/kg bw. UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = ... aPAD = 0.05 mg/kg bw	Prenatal Developmental Toxicity Study—Rat. LOAEL = 25 mg/kg/day based on increase in the fetal incidence of additional thoracic ribs.
Acute dietary (General population including infants and children).	NOAEL = 37.5 mg/kg bw. UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = ... aPAD = 0.375 mg/kg bw	Acute Neurotoxicity Study—Rat. LOAEL = 150 mg/kg bw based on decreased motor activity (total activity counts and total time spent in movement) in both sexes, and a reduction in auditory startle response in females at 24 hours post dose, and mild dehydration in males.
Chronic dietary (All populations)	NOAEL = 5.0 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = ... cPAD = 0.05 mg/kg/day	Chronic toxicity—Dogs. LOAEL = 15 mg/kg/day based on an increased incidence of bradycardia, diarrhea, and decreases in cholesterol, body-weight gain, and food consumption (M); vomiting, diarrhea, excess salivation and decrease cholesterol in females.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENPYROXIMATE 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
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be carcinogen.''		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. mg/kg bw = milligram/kilogram of body weight. 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 fenpyroximate, EPA considered exposure under the petitioned-for tolerances as well as all existing fenpyroximate tolerances in 40 CFR 180.566. EPA assessed dietary exposures from fenpyroximate 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 fenpyroximate. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT), tolerance-level residues for all commodities, DEEM™ (ver. 7.81) default processing factors for all commodities except for apple, pear, and grape juice; raisin; orange, grapefruit, tangerine, lemon and lime juice; tomato paste and puree; and peppermint and spearmint oil. Chemical-specific data were used to calculate empirical processing factors for these commodities.

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 assumed 100 PCT, tolerance-level residues for all commodities, and DEEM™ (ver. 7.81) default processing factors for most commodities except for apple, pear, and grape juice; raisin; orange, grapefruit, tangerine, lemon and lime juice; tomato paste and puree; and peppermint and spearmint oil. Chemical-specific data were used to calculate empirical processing factors for these commodities.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fenpyroximate. Tolerance-level residues and 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 fenpyroximate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenpyroximate. 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 First Index Reservoir Screening Tool (FIRST), a Provisional Cranberry Model and Screening Concentration in Ground Water (SCI–GROW) model, the Agency calculated conservative estimated drinking water concentrations (EDWCs) of fenpyroximate. Tier 1 EDWCs reflect exposure in drinking water to the residues of fenpyroximate and its isomer/degradate, its *cis* isomer M–1, and its carboxylic acid M–3, all of which are assumed to have similar toxicity.

For acute exposures, EDWCs are estimated to be 43 parts per billion (ppb) for surface water and 0.27 ppb for ground water.

For chronic exposures, EDWCs are estimated to be 8.6 ppb for surface water and 0.27 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 43 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 8.6 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). Fenpyroximate is not registered for any specific use patterns that would result in residential exposure.

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 fenpyroximate to share a common mechanism of toxicity with any other substances, and fenpyroximate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenpyroximate 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 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.* There is evidence of increased prenatal (qualitative) susceptibility in a rat prenatal developmental toxicity study. A dose level that marginally affected maternal body weight and food consumption also resulted in an increased litter incidence of increased thoracic ribs. However, concern for pre-natal and post-natal toxicity to fenpyroximate is low because (1) there was a clear NOAEL in the rat prenatal developmental toxicity study; (2) the NOAEL for this developmental study is being used as POD for the acute dietary risk assessment for the population of concern—females 13–49 years old; (3) in the rabbit, there were no developmental effects reported at the levels tested, and (4) in the rat two-generation reproductive toxicity study, there was no indication of increased pre- or post-natal susceptibility.

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 for all exposure scenarios. That decision is based on the following findings:

i. The toxicity database for fenpyroximate is complete.

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

iii. There is evidence that fenpyroximate results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. Increased (qualitative) prenatal susceptibility was seen following oral exposures in the rat developmental toxicity study. However, for the reasons noted in Unit III.D.2., the concern is low.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment utilizes tolerance-level residues (established or recommended) and 100 PCT for all proposed/established commodities. By using these assumptions, the acute and chronic exposures/risks will not be underestimated. The dietary drinking water assessment utilizes water concentration values generated by models and associated modeling parameters, which are designed to provide conservative, health-protective, high-end estimates of water concentrations that will not likely be exceeded. There are no registered or proposed uses that will result in residential exposure. These assessments will not underestimate the exposure and risks posed by fenpyroximate.

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 fenpyroximate will occupy 3.6% of the aPAD for children 1 to 2 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 fenpyroximate from food and water will utilize 9.0% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for fenpyroximate.

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

Short- and intermediate-term adverse effects were identified; however, fenpyroximate is not registered for any use patterns that would result in short- and intermediate-term residential exposure. Short- and intermediate-term risks are assessed based on short- and intermediate term residential exposures plus chronic dietary exposure. Because there are no short- and 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 short- and intermediate-term risks), no further assessments of short- and intermediate-term risks are necessary. EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risks for fenpyroximate.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen/phosphorus detection (GC/NPD), Method S19, has passed an Agency validation) and is available to enforce the tolerance expression.

These 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.

Codex MRLs are established for residues of fenpyroximate *per se* in/on several crop commodities. Harmonization with the Codex MRLs is not possible because the U.S. tolerance expressions include both the parent fenpyroximate and additional metabolites/isomers. However, the Agency is lowering the pome fruit tolerance from 0.40 ppm to 0.30 ppm in order to harmonize with the Codex MRL level. Similarly, based on recently

submitted residue data on citrus, EPA is lowering the existing citrus fruit tolerance from 0.60 ppm to 0.50 ppm in order to harmonize with the Codex MRL level.

C. Revisions to Petitioned-For Tolerances

EPA modified/revised certain IR–4 proposed tolerances based on results from the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures in order to determine appropriate tolerance levels from available U.S. residue data. The proposed tolerance at 0.20 ppm for avocado, black sapote, mamey sapote, canistel, mango, papaya, sapodilla, and star apple was lowered to 0.15 ppm. Similarly, proposed tolerances for cucumber and tea, dried were increased from 0.25 ppm to 0.40 ppm, and from 15 ppm to 20 ppm, respectively. The submitted residue data for corn grain were not entered into the tolerance spreadsheet for OECD calculations because all treated samples showed combined fenpyroximate residues below the level of quantitation (LOQ) of 0.02 ppm. However, based on available residue data, EPA established a tolerance for grain, aspirated fractions at 0.40 ppm to replace proposed tolerances for corn, field aspirated fractions at 2.0 ppm and corn, pop aspirated fractions at 2.0 ppm. In addition, EPA established a tolerance for corn, refined oil at 0.05 ppm. Also, tolerances for fruit, citrus crop group 10–10 and fruit, pome, group 11–10 were reduced to 0.50 ppm and 0.30 ppm, respectively, in order to harmonize with Codex MRL.

The Agency is deleting the existing tolerance for okra at 0.20 ppm since it is included in vegetable, fruiting group 8–10 established by this action. In addition, EPA corrected commodity definitions to comply with current EPA policy as follows: ''corn, field, forage/silage'' and ''corn, pop, forage/silage'' were corrected to ''corn, field, forage'' and ''corn, pop, forage,'' respectively, and ''tea, plucked leaves'' was corrected to ''tea, dried.''

Finally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of fenpyroximate not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methyene]amino]oxy]methyl] benzoate and its Z-isomer, (*Z*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate, including its metabolites and degradates in or on avocado at 0.15 ppm, bean, snap, succulent at 0.40 ppm, canistel at 0.15 ppm, corn, field, grain at 0.02 ppm, corn, field, forage at 2.0 ppm, corn, field, stover at 7.0 ppm, corn, pop, grain at 0.02 ppm, corn, pop, forage at 2.0 ppm, corn, pop, stover at 7.0 ppm, corn, field, refined oil at 0.05 ppm, grain, aspirated fractions at 0.40 ppm, cucumber at 0.4 ppm, fruit, citrus, group 10–10 at 0.50 ppm, fruit, pome, group 11–10 at 0.30 ppm, mango at 0.15 ppm, papaya 0.15 ppm, sapodilla at 0.15 ppm, sapote, black at 0.15 ppm, sapote, mamey at 0.15 ppm, star apple at 0.15 ppm, tea, dried at 20 ppm, and vegetable, fruiting, group 8–10 at 0.20 ppm.

Lastly, EPA is removing the entries for ''fruit, citrus, group 10,'' ''fruit, pome, group 11,'' ''okra'' and ''vegetable, fruiting, group 8'' from the table at 40 CFR 180.566(a)(1) since ''new tolerances'' established by this action will supersede the existing tolerances.

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) (Pub. L. 104–4).

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), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 this final rule in the **Federal Register**. This final rule 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: December 4, 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 § 180.566 revise paragraph (a)(1), and the introductory texts of paragraphs (a)(2), (a)(3) and (b) to read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide fenpyroximate, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only the sum of fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene]amino]oxy] methyl]benzoate and its Z-isomer, (*Z*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate, calculated as the stoichiometric equivalent of fenpyroximate.

Commodity	Parts per million
Almond, hulls	3.0
Avocado	0.15
Bean, snap, succulent	0.40
Berry, low growing, subgroup 13–07G	1.0
Canistel	0.15
Citrus, dried pulp	2.5
Citrus, oil	10
Corn, field, forage	2.0
Corn, field, grain	0.02
Corn, field, refined oil	0.05
Corn, field, stover	7.0
Corn, pop, forage	2.0
Corn, pop, grain	0.02
Corn, pop, stover	7.0
Cotton, gin byproducts	10
Cotton, undelinted seed	0.10
Cucumber	0.40
Fruit, citrus, group 10–10	0.50
Fruit, pome, group 11–10	0.30
Grain, aspirated fractions	0.40
Grape	1.0
Hop, dried cones	10
Mango	0.15
Melon subgroup 9A	0.10
Nut, tree, group 14	0.10
Papaya	0.15
Peppermint, tops	7.0
Pistachio	0.10
Sapodilla	0.15
Sapote, black	0.15
Sapote, mamey	0.15
Spearmint, tops	7.0
Star, apple	0.15
Tea, dried [1]	20
Vegetable, fruiting, group 8–10	0.20

[1] There are no U.S. Registrations.

(2) Tolerances are established for residues of the insecticide fenpyroximate, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only the sum of fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene]amino]oxy] methyl]benzoate and its metabolites (*E*)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl]benzoic acid and (*E*)-1,1-dimethylethyl-2-hydroxyethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene] amino]oxy]methyl]benzoate, calculated as the stoichiometric equivalent of fenpyroximate.

* * * * *

(3) Tolerances are established for residues of the insecticide fenpyroximate, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only the sum of fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl)methylene]amino]oxy] methyl]benzoate and its metabolite (*E*)-4-[(1,3-dimethyl-5-phenoxypyrazol-4-yl)-methyleneaminooxymethyl]benzoic acid, calculated as the stoichiometric equivalent of fenpyroximate.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide fenpyroximate, including its metabolites and degradates in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only the sum of fenpyroximate, (*E*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]amino] oxy]methyl]benzoate and its Z-isomer, (*Z*)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]amino]oxy]methyl]benzoate, calculated as the stoichiometric equivalent of fenpyroximate.

* * * * *

[FR Doc. 2012–29900 Filed 12–11–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–1012; FRL–9365–6]

Pyriproxyfen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyriproxyfen in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 12, 2012. Objections and requests for hearings must be received on or before February 11, 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–2011–1012, 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: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather

provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–1012 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 11, 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–2011–1012, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 14, 2012 (77 FR 15012) (FRL–9335–9), 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 1E7950) by IR–4, IR–4 Project Headquarters, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxypyridine, in or on vegetable, bulb, group 3–07 at 0.70 parts per million (ppm); vegetable, fruiting, group 8–10 at 0.20 ppm; fruit, citrus, group 10–10 at 0.30 ppm; fruit, pome, group 11–10 at 0.20 ppm; caneberry subgroup 13–07A at 1.0 ppm; bushberry subgroup 13–07B at 1.0 ppm; berry, low growing, except strawberry, subgroup 13–07H at 1.0 ppm; and herb subgroup 19A at 50 ppm. Also, due to the establishment of the tolerances for the new crop groups listed in this unit, the petition proposed the removal of the following commodities as unnecessary: Vegetable, bulb, group 3, except onion, bulb; onion, bulb; vegetable, fruiting, group 8; okra; fruit, citrus; fruit, pome; caneberry subgroup 13–A; bushberry subgroup 13–B; cranberry; loganberry; juneberry; lingonberry; and salal. That document referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for several commodities. The reason for these changes is explained in Unit IV.C.

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 pyriproxyfen including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyriproxyfen 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.

Pyriproxyfen is of low acute toxicity by oral, dermal, inhalation, and ocular routes of exposure. Pyriproxyfen is not a skin irritant and was negative in the dermal sensitization study in guinea pigs. Based on repeated dose studies in mice, rats, and dogs the liver and kidney are the principal target organs, with slight anemia occurring in rodent species. The review of the acute and subchronic neurotoxicity studies indicates pyriproxyfen is not a neurotoxic chemical. There was no evidence of prenatal or postnatal sensitivity or increased susceptibility in developmental studies in rats and rabbits, and in reproduction studies in rats. In the 2-generation reproduction toxicity study, offspring toxicity (decreased body weight on pups during lactation days 14 to 21) occurred in the presence of decreased body weight in parental animals at the same dose level. An immunotoxicity study showed no adverse effects on the immune system. No significant systemic toxicity was

observed in either the 21-day dermal toxicity study in rats. In a 28-day inhalation study, the Lowest-observed-adverse-effect-level (LOAEL) of 1 milligram/Liter (mg/L) based on salivation in females and sporadic decreased body weight gains in males was not considered biologically relevant. With respect to carcinogenicity pyriproxyfen has been classified as a ''Group E'' chemical—no evidence for carcinogenicity to humans based on the absence of carcinogenicity in mice and rats. Pyriproxyfen is negative for mutagenic activity in a battery of mutagenicity studies conducted with both the parent and/or metabolites.

Specific information on the studies received and the nature of the adverse effects caused by pyriproxyfen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* on pp. 28–33 in the document titled ''Pyriproxyfen. Human Health Risk Assessment for the Request to Add Uses on Herb Subgroup 19A, and the Expansions of Existing Crop Group Uses to Numerous Crop Subgroups'' in docket ID number EPA–HQ–OPP–2011–1012.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/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 pyriproxyfen used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRIPROXYFEN 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 and general population).	An appropriate endpoint attributable to a single oral dose was not available in the data base, including the developmental and reproduction toxicity studies.		
Chronic dietary (All populations)	NOAEL = 35.1 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.35 mg/kg/day. cPAD = 0.35 mg/kg/day.	Subchronic and chronic rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and alterations in clinical pathology parameters.
Incidental oral short-term (1 to 30 days).	NOAEL = 100 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	Rat developmental toxicity Maternal LOAEL = 300 mg/kg/day based on decreased body weight, body weight gain, and food consumption, and increased water consumption.
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 35.1 mg/kg/day. UF_A= 10X UF_H= 10X FQPA SF = 1X	LOC for MOE = 100	Subchronic and chronic rat (co-critical) LOAEL = 141.28 mg/kg/day based on decreased body weight and alterations in clinical pathology parameters.
Dermal long-term (6 months—lifetime).	Oral study NOAEL = 35.1 mg/kg/day (dermal absorption rate = 30%. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	Subchronic and chronic rat (co-critical) LOAEL = 141.28 mg/kg/day based decreased body weight and alterations in clinical pathology parameters.

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 (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 pyriproxyfen, EPA considered exposure under the petitioned-for tolerances as well as all existing pyriproxyfen tolerances in 40 CFR 180.510. EPA assessed dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for pyriproxyfen;

therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance level residues.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for pyriproxyfen. 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 pyriproxyfen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyriproxyfen. 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 the Generic Estimated Exposure Concentration (GENEEC) model the estimated drinking water concentrations (EDWCs) of pyriproxyfen for chronic exposure assessments are estimated to be 2.98 parts per billion (ppb) for surface water and 0.006 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 2.98 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).

Pyriproxyfen is currently registered for flea and tick control (home environment and pet treatments) as well as products for ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays, and pipettes for pet treatments), granules, bait (indoor and outdoor), and impregnated materials (pet collars). EPA assessed residential exposure using the following assumptions: Although there is the potential for short-term residential handler dermal and inhalation exposure as well as short or intermediate post-application exposure from the registered uses of pyriproxyfen, there are no short-term dermal or inhalation PODs and quantitative assessments were not conducted.

Based on the registered use patterns, the following post-application scenarios were assessed: Short- and intermediate-term hand-to-mouth exposures for 1 to <2 year olds from treated carpets and flooring and petting treated animals (shampoos, sprays, spot-on treatments and collars); long-term hand-to-mouth exposures for 1 to <2 year olds from treated carpets and flooring and petting treated animals; and long-term dermal exposures from treated carpets, flooring, and pets.

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 pyriproxyfen to share a common mechanism of toxicity with any other substances, and pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyriproxyfen 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 Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factors (SF) when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following prenatal/postnatal exposure in the 2-generation reproduction study.

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 pyriproxfen is complete.

ii. There is no indication that pyriproxyfen is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

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

iv. 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 pyriproxyfen 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 pyriproxyfen.

E. Aggregate Risks and Determination of Safety

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

residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyriproxyfen from food and water will utilize 12% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. A long-term post-application residential assessment was performed for toddlers only since they are anticipated to have higher exposures than adults from treated home environments and pets due to their behavior patterns. The total chronic dietary and residential aggregate MOE is 220 for children 1–2 years old. As this MOE is greater than 100, the chronic aggregate risk does not exceed EPA's level of concern.

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). Pyriproxyfen 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 pyriproxyfen.

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 an aggregate MOE of 2,000 for children 1–2 years old, the population subgroup receiving the greatest exposure. Because EPA's level of concern (LOC) for pyriproxyfen is a MOE of 100 or below, this MOE is 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).

Pyriproxyfen is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to pyriproxyfen.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 720 for children 1–2 years old, the population subgroup receiving the greatest exposure. Because EPA's LOC for pyriproxyfen is a MOE of 100 or below, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, pyriproxyfen 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 pyriproxyfen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography with Nitrogen Phosphorous Detection; GC/NPD) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for pyriproxyfen in or on citrus fruit at 0.50 ppm. This MRL is the same as the tolerance being established for pyriproxyfen on the citrus group 10–10 in the United States. There are no Codex MRLs for the other commodities addressed by this final rule.

C. Revisions to Petitioned-for Tolerances

Based on calculations using the Organization for Economic Co-operation and Development (OECD) MRL calculator, the Agency is establishing the tolerance for the herb subgroup 19A at 100 ppm instead of the proposed level of 50 ppm. In addition, the tolerance for the citrus fruit group 10–10 is being revised to 0.5 ppm to harmonize with Codex and the tolerance for the fruiting vegetable group 8–10 is being revised to 0.8 ppm to harmonize with the Canadian MRL for bell peppers.

Lastly, EPA has revised the tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of pyriproxyfen not specifically mentioned.

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy) ethoxypyridine, in or on vegetable, bulb, group 3–07 at 0.70 ppm; vegetable, fruiting, group 8–10 at 0.80 ppm; fruit, citrus, group 10–10 at 0.50 ppm; fruit, pome, group 11–10 at 0.20 ppm; caneberry subgroup 13–07A at 1.0 ppm; bushberry subgroup 13–07B at 1.0 ppm; berry, low growing, except strawberry, subgroup 13–07H at 1.0 ppm; and the herb subgroup 19A at 100 ppm. Also, due to the establishment of the tolerances for the new crop groups listed in this unit, the following are being removed as unnecessary: Vegetable, bulb, group 3, except onion, bulb; onion, bulb; vegetable, fruiting, group 8; okra; fruit, citrus; fruit, pome; caneberry subgroup 13–A; bushberry subgroup 13–B; cranberry; loganberry; juneberry; lingonberry; salal; and citrus hybrids.

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: December 4, 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 § 180.510:

■ a. Revise the introductory text of paragraph (a)(1).

■ b. Remove from the table in paragraph (a)(1) the commodities: ''Bushberry subgroup 13–B''; ''Caneberry subgroup 13–A''; ''Citrus hybrids'', ''Cranberry''; ''Fruit, citrus''; ''Fruit, pome''; ''Juneberry''; ''Lingonberry''; ''Loganberry''; ''Okra''; ''Onion, bulb''; ''Salal''; and ''Vegetable, bulb, group 3, except onion, bulb''; and ''Vegetable, fruiting, group 8''.

■ c. Add alphabetically the following commodities to the table in paragraph (a)(1).

The amendments read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of pyriproxyfen, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified is determined by measuring only pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy) ethoxy]pyridine, in or on the commodity.

Commodity	Parts per million
* * * * *	
Berry, low growing, except strawberry, subgroup 13–07H	1.0
* * * * *	
Bushberry subgroup 13–07B	1.0
* * * * *	
Caneberry subgroup 13–07A	1.0
* * * * *	
Fruit, citrus, group 10–10	0.50
Fruit, pome, group 11–10	0.20
* * * * *	
Herb subgroup 19A	100
* * * * *	
Vegetable, bulb, group 3–07	0.70
* * * * *	
Vegetable, fruiting, group 8–10	0.80
* * * * *	

* * * * *

[FR Doc. 2012–29978 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 10–153; RM–11602; FCC 12–122]

Facilitating the Use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission (FCC) published a document in the **Federal Register** of September 5, 2012. In this document, the FCC on its own motion, pursuant to § 1.108 of the Commission's rules, corrects the channel center frequencies to align the wider 60 and 80 megahertz channels with the existing 30 and 40 megahertz channels in part 101 of our rules in the *Wireless Backhaul 2nd R&O* and issues this limited modification of the *Wireless Backhaul 2nd R&O,* in order to establish more efficient channel assignments, consistent with the Commission's intent to improve spectrum utilization in these bands. In addition, the FCC corrects an entry to the table in § 101.115(b)(2).

DATES: Effective December 12, 2012.

FOR FURTHER INFORMATION CONTACT: John Schauble, Wireless Telecommunications

Bureau, Broadband Division, at 202–418–0797 or by email to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* adopted on October 4, 2012 and released on October 5, 2012, FCC 12–122, correcting § 101.147 of the Commission's final rules adopted in the *Wireless Backhaul 2nd R&O,* FCC 12–87, published at 77 FR 54421 (September 5, 2012). The table under Frequency assignments, §§ 101.147(i)(9) and 101.147(o)(8) were incorrect and an entry to the table under Directional antennas in § 101.115(b)(2) is incorrect. This document makes the following corrections.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Bulah P. Wheeler,

Associate Secretary.

Accordingly, 47 CFR part 101 is corrected by making the following correcting amendments:

PART 101—FIXED MICROWAVE

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 2. In § 101.115, amend paragraph (b)(2) by revising the frequency entry to the table ''6,875 to 7,075'' to read ''6,875 to 7,125'' as follows:

§ 101.115 Directional antennas.

* * * * *

(b) * * *

(2) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
*	*	*	*	*		*			*	
6,875 to 7,125	A	2.2	38	25	29	33	36	42	55	55
	B1	2.2	38	21	25	29	32	35	39	45
	B2	4.1	32	15	20	23	28	29	60	60
*	*	*	*	*		*			*	

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.

* * * * *

■ 3. Amend § 101.147 by revising the frequency tables in paragraphs (i)(9) and (o)(8) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(i) * * *

(9) * * *

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5960.025	6212.065
6019.325	6271.365
6078.625	6330.665
6137.925	6389.965

* * * * *

(o) * * *

(8) * * *

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10755	11245
10835	11325
10915	11405
10995	11485
11075	11565
11155	11645

* * * * *

[FR Doc. 2012–28495 Filed 12–11–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121203677–2677–01]

RIN 0648–BC67

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Elephant Trunk Area

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

ACTION: Temporary rule; emergency action.

SUMMARY: This temporary rule implements emergency measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to close the Elephant Trunk Area (ETA) to all scallop vessels for up to 180 days in order to protect the abundance of small scallops in the area. Closing the ETA will prevent fishing effort in this area, which could reduce long-term scallop biomass and optimum yield from the ETA, and could compromise the overall success of the scallop area rotational management program. The New England Fishery Management Council (Council), with the support of the scallop industry, requested that NMFS take this action quickly in order to minimize fishing effort in the ETA.

DATES: Effective December 12, 2012, through June 10, 2013. Comments must be received by January 11, 2013.

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

You may submit comments on this document, identified by NOAA–NMFS–2012–0237, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon,

then enter NOAA–NMFS–2012–0237 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Emergency Rule to Close the Elephant Trunk Area.''

• *Fax:* (978) 281–9135; *Attn:* Travis Ford.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2004, a large abundance of small scallops was discovered in the ETA, and later that year, the ETA was closed to scallop fishing to protect the small scallops and allow them to grow. Following closure of the ETA, scallop biomass increased steadily in the area. When the ETA opened in 2007, it contained over one-quarter of the total scallop biomass. The area was fished as a controlled access area for 4 years (2007–2010) and supported a total of 12 access area trips for each full-time vessel, yielding around 72 million lb (32,659 mt) of scallops while it was an access area. As designed under the scallop fishery's area rotation program, the heavy fishing effort decreased scallop biomass significantly. Framework Adjustment 22 to the Scallop FMP (Framework 22) (76 FR 43774; July 21, 2011), which used 2010 scallop resource survey results, changed the ETA from an access area to an open area because the scallop biomass no longer supported access area trip allocations to that area.

At the Council's Scallop Plan Development Team (PDT) meeting on August 19 and 20, 2012, staff from the NMFS Northeast Fisheries Science Center and researchers from the Virginia Institute of Marine Science (VIMS), Arnie's Fisheries, and the University of Massachusetts School for Marine Science and Technology (SMAST) presented results from their 2012 ETA scallop resource surveys. All four surveys, which represent the best available scientific information regarding the status of the scallop resource, indicated that the abundance of very small scallops (which represents future recruitment for the fishery) in the ETA is extremely high compared to recent years. In 2012, the mean number of scallops per tow with less than 75 mm (3 in) shell height in the ETA was 994, compared to 24 in 2011. Most of the scallop biomass in the Mid-Atlantic is in the ETA and the Delmarva Area (currently closed). However, most of this biomass is small scallops.

Vessels are currently allowed to fish open area days-at-sea in the ETA. To allow any additional trips into the area will result in the taking of these abundant small scallops, thereby preventing maximizing optimal catch in the future under the rotational management scheme. Targeting of scallops in the ETA at this time is likely to have negative impacts on recruitment in the short and medium term, and could reduce the long-term biomass and yield from the ETA and the overall Mid-Atlantic area. The success of the entire scallop access area rotational management program depends on timely openings and closing of access areas in order to protect scallop recruitment and optimize yield. This is particularly true in the Mid-Atlantic, where recruitment has been well below average for several years. Further, if vessels choose to fish in the ETA, scallop catch rates will likely be low, which increases fishing effort, bycatch, costs, and impacts on protected resources and habitat.

At its September 2012 meeting, the Council requested that we take emergency action under Section 305(c) of the Magnsuson-Stevens Act to close the ETA as soon as possible to avoid the negative impacts described above. The Council's request was supported by the Fisheries Survival Fund (a group that represents the majority of the full-time scallop vessels in the scallop fishery). The Council voted 15–1 in favor of the emergency request with the NMFS representative voting against, based on NMFS's policy to avoid unanimous votes for emergency recommendations, which would obligate the Secretary to implement the emergency request. This policy was explained to the Council.

Pursuant to the Council's request, NMFS publishes this emergency action to close the ETA for 180 days, the maximum allowed, without an extension, under Magnuson-Stevens Act. NMFS expects that the closure will continue for an additional 2 years through a combination of an extension of the emergency action, as allowed under the Magnuson-Stevens Act, if needed, measures being developed by the Council under Framework 24, and future actions. NMFS does not expect the closure to adversely impact the scallop fleet, because these vessels have flexibility to fish in other areas to make-up for lost fishing opportunities in the ETA.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of closing ETA meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstance. The new information from the ETA 2012 scallop surveys presents a recently discovered circumstance and therefore warrants emergency action. Results of the most recent survey were presented at the August 20 and 21, 2012, Scallop PDT meeting. The new information suggests that there is a significantly larger amount of small scallops in ETA than projected through Framework 22, which

changed the ETA from an access area into an open area. In 2012, the mean number of scallops per tow with less than 75 mm shell height in the ETA was 994, compared to 24 in 2011.

This situation presents serious conservation or management problems in the fishery. The success of the entire scallop area rotation program, and the need to attain optimal yield from this fishery, depends on timely openings and closing of access areas in order to protect scallop recruitment and optimize yield. This is particularly true in the Mid-Atlantic, where recruitment has been well below average for several years but has recently begun to rebound. If the smaller scallops are not protected as soon as possible, it would jeopardize the area rotation program and optimal production of scallops in the ETA in the future. Fishing effort in the ETA could compromise the overall success of the area rotation program and achieving optimum yield. Fishing activity in ETA could negatively impact scallop recruitment and reduce long-term biomass and yield from the area. Due to low catch rates of legal-size scallops in this area, there is much concern about discard and bycatch mortality of the abundant smaller scallops that could occur while vessels are targeting the larger scallops. Further, when catch rates fall, vessels must fish longer to harvest the same total catch, increasing area swept, or time that fishing gear is in the water. Increased area swept has greater impacts on bycatch, habitat, and protected resources, as well as increased costs for fishing vessels due to longer trips. The increase in fishing costs would also have negative impacts on the producer surplus and net economic benefits from the fishery.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. The Council has the authority to develop a management action to close the ETA and it is doing so through Framework 24, but this process is too slow to address the immediate problem presented in the ETA. Framework 24 was adopted by the Council in November 2012, but will not be implemented until the spring of 2013 due to procedural and rule making requirements. However, protection of the small scallops in the ETA is needed as soon as possible to prevent vessels from depleting the abundance of small scallops by fishing inefficiently in the ETA. There is no other action that either the Council or NMFS can take through the normal rulemaking process that would enable us to implement the critical closure in time to prevent harmful fishing activity in the ETA. An emergency action enables us to redirect open area scallop fishing effort in order to avoid unnecessary adverse biological and economic impacts. Therefore, the urgency to protect these small scallops through a final rule outweighs the value of providing prior public comment, particularly given that the members of the public most affected by this action have requested it and public comment was provided at the September Council meeting.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

By closing the ETA, this action avoids jeopardizing the success of the access area program in future years by protecting scallop recruitment in the ETA. The new information from the ETA 2012 scallop surveys suggests that there is a significantly larger amount of small scallops in ETA than projected through Framework 22, which changed the ETA from an access area into an open area. An analysis of VMS data showed that, in the 2 months following this PDT meeting, 36 trips were taken in the ETA, resulting in over 3,000 hr of fishing activity. There is no action that either the Council or NMFS can take through the normal rulemaking process that would enable NMFS to implement the critical closure in time to prevent harmful fishing activity in the ETA. This emergency action enables NMFS to redirect open area scallop fishing effort in order to avoid unnecessary adverse biological and economic impacts. Therefore, the urgency to protect these small scallops through a final rule outweighs the value of providing prior public comment, particularly given that the members of the public most affected by this action have requested it and public comment was provided at the September Council meeting. This action did not allow for prior public comment because the review process and determination could not have been completed any earlier, due to the inherent time constraints associated with the process. The new information from the ETA 2012 scallop surveys presents a recently discovered circumstance and therefore warrants emergency action. Results of the most recent survey were only presented at the August 20 and 21, 2012, Scallop PDT meeting. Although this action is being implementing without notice and comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule if other measures to close the area are not implemented before the expiration of this rule.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This action is undertaken at the request of the Council. The Council, with the support of a group representing a large portion of the industry, urged that NMFS implement this action quickly in order to minimize any fishing effort in the ETA. Moreover, it would be contrary to the public interest if this rule does not become effective immediately because even an additional 30 days of fishing in the area could lead to increased mortality of small scallops in the ETA. This could have negative impacts on recruitment in the short and medium term, and could reduce the long term biomass and yield from the ETA and the overall Mid-Atlantic. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

In the interest of receiving public input on this action, the EA analyzing this action will be made available to the public and this temporary final rule solicits public comment.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 6, 2012.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

§ 648.53 [Amended]

■ 2. In § 648.53, paragraph (b)(4)(v) is suspended.

■ 3. In § 648.58, paragraph (e) is added to read as follows:

§ 648.58 Rotational Closed Areas.

* * * * *

(e) *Elephant Trunk Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETA1	38°50′ N.	74°20′ W.
ETA2	38°10′ N.	74°20′ W.
ETA3	38°10′ N.	73°30′ W.
ETA4	38°50′ N.	73°30′ W.
ETA1	38°50′ N.	74°20′ W.

[FR Doc. 2012–29967 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 239
Wednesday, December 12, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AMS–FV–11–0076; FV11–905–1 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redistricting and Reapportionment of Grower Members, and Changing the Qualifications for Grower Membership on the Citrus Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would redefine districts, reapportion representation, and modify the qualifications for membership on the Citrus Administrative Committee (Committee). The Committee is responsible for local administration of the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). This rule would reduce the number of districts, reapportion representation among the districts, and allow up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes would adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee.

DATES: Comments must be received by January 11, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Corey.Elliott@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would redefine districts, reapportion representation, and modify the qualifications for membership on the Committee. This rule would reduce the number of districts, reapportion grower representation among the districts, and allow up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes would adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee. These changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

Section 905.14 of the order provides the authority to redefine the districts into which the production area is divided and to reapportion or otherwise change the grower membership of the districts to assure equitable grower representation on the Committee. This section also provides that such changes are to be based, so far as practicable, on the averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and, (3) the total number of acres of citrus in each district. It also requires that the Committee consider such redistricting and reapportionment during the 1980–81 fiscal period and only in each fifth fiscal period thereafter. The recommendation of July 14, 2011, is consistent with the time requirements of this section.

Section 905.19 provides for the establishment of and membership on the Committee, including the number of grower and handler members and their corresponding qualifications to serve. In

addition, this section provides the authority for the Committee, with the approval of the Secretary, to establish alternative qualifications for grower members. Current qualifications specify that grower members cannot be shippers or employees of shippers.

Currently, § 905.114 of the order's administrative rules and regulations lists and defines four grower districts within the production area. District One includes the counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District Two includes the counties of Polk and Osceola. District Three includes the counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. District Four includes St. Lucie County and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County.

Section 905.114 also specifies the grower representation on the Committee from each district. Currently, District One is represented by one grower member and alternate; District Two is represented by two grower members and alternates; Districts Three and Four are represented by three grower members and alternates each.

Since the last redistricting and reapportionment in 1991, total citrus acreage has fallen by 24 percent, production has fallen by 23 percent, and fresh shipments have fallen by 60 percent. Citrus production and growing acreage have gradually shifted from the north and central parts of the state to the eastern and southwestern growing regions following damaging freezes. The industry has also seen an overall decrease in acreage and production due to real estate development and the impact of several hurricanes. Increased production costs associated with replanting, cultivating, and battling citrus diseases, such as canker and greening, have also contributed to changes in production.

Considering the numerous changes to the industry, the Committee discussed the need to redistrict the production area and reapportion grower membership at its meeting on July 14, 2011. During the discussion, Committee members agreed that industry conditions have been stabilizing, making this an appropriate time to consider redistricting and reapportionment. Trees planted to replace acreage lost to disease and hurricane damage are now producing, new production practices are helping to mitigate the effects of disease, and a weakened housing market has reduced development. These factors have all contributed to greater stability within the industry.

In considering redistricting and reapportionment, the Committee reviewed the information and recommendations provided by the subcommittee tasked with examining this issue. The subcommittee reviewed the numbers for acreage, production, and shipments from all counties in the production area as required in the order. While this information was beneficial in showing how the industry had changed since the last time the production area was redistricted, there were concerns about how representative these numbers were of the fresh citrus industry.

The majority of Florida citrus production goes to processing for juice, and the available numbers for acreage and production by county do not delineate between fresh and juice production, making it difficult to determine if those numbers reflect fresh production. Further, reviewing the available data for fresh shipments also presented problems in that the numbers were more reflective of handler activity rather than grower activity, as fruit from many counties is handled in counties other than where the fruit is grown, and often in separate districts from where the fruit is grown.

In an effort to provide numbers reflective of grower production utilized for fresh shipments, the subcommittee used the available information on trees by variety in each county combined with the percentage of fresh production by variety to calculate a fresh production estimate for each county. Currently, 3 percent of orange, 44 percent of grapefruit, and 58 percent of specialty citrus production are shipped to the fresh market. Using these estimates, District One currently accounts for 9 percent of fresh production, District Two 13 percent, District Three 31 percent and District Four 47 percent of fresh production.

Based on the fresh production estimates and other information available, the subcommittee recommended reducing the number of districts from four to three by combining current Districts One and Two, into a new District One. Current District Three would become District Two, and District Four would become District Three. The subcommittee also recommended that the nine grower members be reapportioned, as follows, based on the estimates for fresh production: two grower members and alternates for District One, three grower members and alternates for District Two, and four grower members and alternates for District Three.

With 9 growers serving on the Committee, each member would represent approximately 11 percent of fresh production. Under the subcommittee recommendation, District One, with 22 percent of the fresh production, would be represented by 22 percent of the grower members and alternates on the Committee, with two grower members and alternates. District Two, with 31 percent of fresh production, would be represented by 33 percent of the grower members and alternates on the Committee, with three grower members and alternates. District Three, with 47 percent of fresh production, would be represented by 44 percent of the grower members and alternates on the Committee, with four grower members and alternates.

In discussing the recommendations of the subcommittee, Committee members found that the estimated fresh production numbers were a good indicator of fresh production and were beneficial when considering how the production area should be redistricted and grower membership distributed. Based on the new districts, and the estimated fresh production, the Committee agreed that the subcommittee's recommendations evenly allocated grower membership. Consequently, the Committee voted unanimously in support of the proposed changes.

Accordingly, District One would include the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District One would be represented by two grower members and alternates.

District Two would include the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin

not included in Regulation Area II. District Two would be represented by three grower members and alternates.

District Three would include the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district would have four grower members and alternates.

In addition to discussing redistricting and reapportionment of grower representation on the Committee, the Committee also considered changes to the grower membership qualifications established under the order. When the qualifications for grower membership were established, the line between growers and shippers was clearer, with more growers in the business of just producing fresh fruit for the fresh market and not involved in the shipping aspect of the industry. However, over the years, the industry has seen more growers partnering to form shipping interests or vertically integrating with shippers.

This trend began in the 1990s, when the industry was in an oversupply situation, and growers were looking for ways to assure their fruit was purchased. This consolidation between growers and shippers continued as the industry adjusted to changes in production and reacted to the pressures of disease, rising land values, hurricanes and freezes. Also, the same pressures that have encouraged consolidation and vertical integration have prompted many growers to leave the industry, further reducing the number of growers solely engaged in production.

Currently, a grower who is affiliated with or is an employee of a shipper does not qualify to serve as a grower member on the Committee. In discussing this issue, the Committee recognized the changes in the makeup of the industry, and the need to revise the qualifications for grower membership to reflect these changes. Committee members agreed that with growers who are affiliated with shippers playing an increasing role in the industry, a change should be made to facilitate their participation on the Committee. Several Committee members stated that they thought such a change was important, but that the majority of grower seats on the Committee should be maintained for pure growers, those not affiliated with a shipper.

To create an opportunity for shipper-affiliated growers to serve on the Committee, while maintaining the majority of positions for pure growers, it was proposed that the grower qualifications for membership on the Committee be modified so that up to four grower members may be growers affiliated with or employed by shippers, with the remaining five seats open only to pure growers who are not affiliated with or employed by shippers. Committee members supported this proposal because it does not mandate that the four positions be filled by growers affiliated with shippers, but does create the opportunity for these types of growers to serve on the Committee. This proposed change would provide the flexibility to expand grower membership to include growers who are affiliated with shippers without limiting the opportunity for pure growers to serve.

The Committee believes this change would make the Committee more reflective of the fresh segment of the Florida citrus industry. Providing the opportunity for growers affiliated with shippers to serve on the Committee would help bring additional perspectives and ideas to the Committee, would allow another segment of growers to serve on the Committee, and may create an increased opportunity for participation by small citrus operations. Further, retaining five of the nine grower seats as seats for only pure growers would help maintain a balance between grower and shipper representation on the Committee.

With growers who are affiliated with the shipping segment of the industry playing an increasing role in the industry and the expectation that this segment of growers will continue to increase, the Committee believes facilitating their inclusion on the Committee would better reflect the current industry structure. Widening the pool of growers from which members are nominated would also create additional opportunities for growers with different backgrounds and perspectives to serve on the Committee. Therefore, the Committee unanimously recommended revising grower member qualifications to allow up to four growers who are affiliated with or employed by shippers to serve as grower members on the Committee.

The next round of grower nominations should be held in May 2013. In order to give the industry ample notice of these proposed changes, and because Section 905.14 requires that this announcement occur on or before March 1 of the then current fiscal year, the modifications would need to be in effect prior to March 1, 2013, to be utilized in the May 2013 elections.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 8,000 producers of oranges, grapefruit, tangerines, and tangelos in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010–11 season was approximately $12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, and assuming a normal distribution, at least 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices reported by the National Agricultural Statistics Service and the total number of Florida citrus producers, the average annual producer revenue is less than $750,000. Therefore, the majority of handlers and producers of Florida citrus may be classified as small entities.

This rule would reduce the number of districts from four to three, reapportion grower representation among the districts, and allow up to four growers who are shippers or employees of shippers to serve as grower members on the Committee. These changes would adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee. This rule would revise § 905.114 of the regulations regarding grower districts and the allotment of

members amongst those districts, and would add a new paragraph to § 905.120 of the rules and regulations to revise grower membership qualifications. The authority for these actions is provided in §§ 905.14 and 905.19 of the order, respectively. These proposed changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

It is not anticipated that this action would impose any additional costs on the industry. This action would have a beneficial impact as it more accurately aligns grower districts and reapportions grower membership in accordance with the production of fresh Florida citrus. This action would also create an opportunity for growers that are affiliated with or employees of shippers to serve on the Committee as grower members. These changes should provide equitable representation to growers on the Committee and increase diversity by allowing more growers the opportunity to serve. These proposed changes are intended to make the Committee more representative of the current industry. The effects of this rule would not be disproportionately greater or less for small entities than for larger entities.

The Committee discussed alternatives to these changes including making no changes to the districts or the apportionment of grower membership. The Committee recognized that there had been some significant changes to the industry since the last time the production area was redistricted and members reapportioned in 1991. The Committee determined that some changes were needed to make the districts and the apportionment of members reflective of the current industry structure. In discussing alternatives to changing grower member qualifications, the Committee explored making no changes to the qualifications or setting more restrictive limits on the alternate qualifications for growers affiliated with shippers. However, the Committee agreed that changes to the structure of the industry, including increasing vertical integration, would support making a change to grower membership qualifications. Further, the Committee believes allowing up to four growers affiliated with or employed by shippers to serve on the Committee would create an opportunity for these growers, but maintain a majority of seats for pure growers who are not affiliated with shippers. Therefore, for the reasons above, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic Fruit Crops. No changes in those requirements as a result of this action would be necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed action would require textual changes to the form FV–163, Confidential Background Statement. However, the changes would be purely cosmetic and would not affect the burden. In light of the redistricting, District 4 would be removed as a check-off option. A statement on the form would also be reworded to accommodate the revision in grower member qualifications. With this change, the OMB currently approved total burden for completing FV–163 would remain the same. A Justification for Change for these changes would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports, and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place prior to March 1, 2013, for the Committee to use these proposed changes in the 2013–14 grower nomination cycle. All written comments timely received will be considered before a final determination is made on this matter.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because Committee nominations are scheduled to be held in the spring. These changes would need to be in effect in advance so that industry stakeholders are familiar with the new grower districts, reapportionment, and qualifications prior to the nomination process. Further, to be effective for the next nomination cycle, the order requires that the redistricting and reapportionment actions be announced on or before March 1, 2013. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.114 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

* * * * *

(a) Citrus District One shall include the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) Citrus District Two shall include the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee,

Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have four grower members and alternates.

3. A new paragraph (g) is added to § 905.120 to read as follows:

§ 905.120 Nomination procedure.

* * * * *

(g) Up to four grower members may be growers who are also shippers, or growers who are also employees of shippers.

Dated: November 28, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–29244 Filed 12–11–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126770–06]

RIN 1545–BG07

Allocation of Costs Under the Simplified Methods; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on notice proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations that provide guidance on allocating costs to certain property produced by the taxpayer or acquired by the taxpayer for resale.

DATES: The public hearing is being held on Monday, January 7, 2013, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Wednesday, December 19, 2012.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–126770–06), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–126770–06), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–126770–06).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christopher Call at (202) 622–4940; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–126770–06) that was published in the **Federal Register** on Wednesday, September 5, 2012 (77 FR 54482).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by December 4, 2012, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 Constitution Avenue NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2012–29932 Filed 12–7–12; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No: MT–033–FOR; Docket ID: OSM–2011–0012]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the withdrawal of a proposed rule pertaining to an amendment to the Montana regulatory program (the Montana program) and its coal rules and regulations. Montana submitted the amendment at their own initiative to modify coal prospecting procedures and allow for a new type of coal prospecting permit.

DATES: The proposed rule published October 17, 2011, at 76 FR 64047, is withdrawn December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018; Telephone: 307–261–6550, email address: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Withdrawal

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program

amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Withdrawal

By letter dated July 20, 2011, Montana sent us an amendment to its program (SATS No. MT–033–FOR, Administrative Record Docket ID No. OSM–2011–0012) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment to include changes made to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as a result of the 2011 Montana Legislature passage of Senate Bill 286 relating to coal prospecting. Montana sent the amendment to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the October 17, 2011, **Federal Register** (76 FR 64047). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record ID No. OSM–2011–0012–0004). We did not hold a public hearing or meeting because no one requested one. We received comments from the Montana Historical Society, Westmoreland Resources Inc., the Bureau of Land Management, and the Mine Safety and Health Administration (Administrative Record ID No. OSM–2011–0012–0010).

During our review of the amendment, we identified areas needing clarification at MSUMRA Section 82–4–226. We notified Montana of our concerns by letter dated November 22, 2011 (Administrative Record ID No. OSM–2011–0012–0005).

We delayed final rulemaking to afford Montana the opportunity to submit new material to address the concerns. Montana responded in a letter dated December 22, 2011, by submitting additional explanatory information (Administrative Record ID No. OSM–2011–0012–0006). Based upon Montana's additional explanatory information for its amendment, we reopened the public comment period in the March 27, 2012, **Federal Register** [(77 FR 18149); (Administrative Record Document ID No. OSM–2011–0012–0007)] and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. We did not hold a public hearing or meeting because no one requested one. We received comments from the State Historic Preservation Office, the Mine Safety and Health Administration, the US Geological Survey, and the Bureau of Land Management (Administrative Record ID No. OSM–2011–0012–0011).

In a letter dated October 5, 2012 (Administrative Record Document ID No. OSM–2011–0012–0013), Montana notified us that they were withdrawing the proposed amendment at this time. Montana stated in the letter that they were submitting additional rule language to be reviewed informally by OSM in anticipation of promulgation of the revised rule through the Montana State Legislature sometime around April 2013.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Accordingly, the proposed rule published October 17, 2011, at 76 FR 64047, is withdrawn December 12, 2012.

Dated: October 16, 2012.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. 2012–30031 Filed 12–11–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–049–FOR; Docket ID OSM–2012–0015]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We are announcing receipt of revisions pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposes to revise references to Federal regulations specifying abandoned mine land reclamation contractor eligibility criteria. These changes relate to the Ownership and Control required amendments. Utah intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments on this amendment until 4:00 p.m., [m.s.t.] December 27, 2012.

ADDRESSES: You may submit comments, identified by ''SATS #UT–049–FOR'' or ''Docket ID OSM–2012–0015,'' by any of the following methods:

- *Email: cbelka@OSMRE.gov.* Please include ''Docket ID OSM–2012–0015'' in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO, 80202, (303)293–5012, *kwalker@OSMRE.gov.*
- *Fax:* (303) 293–5017.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and Docket ID OSM–2012–0015. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket, to review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO, 80202, (303)293–5012, *kwalker@OSMRE.gov.*

John R. Baza, Director, Utah Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, Salt Lake City, UT 84116, (801)538–5334, *johnbaza@utah.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Walker, Chief, Denver Field Division, Telephone: (303)293–5012, Internet address: *kwalker@OSMRE.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with

regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Description of the Proposed Amendment

By letter dated June 25, 2012, Utah sent us a proposed amendment to its program (SATS #UT–049–FOR, Administrative Record No. OSM–2012–0015–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the proposed amendment in response to an October 2, 2009 letter (Administrative Record No. OSM–2012–0015–0003) that OSM sent to Utah in accordance with 30 CFR 732.17(c). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

We announced receipt of the proposed amendment in the September 5, 2012, **Federal Register** (77 FR 54491), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. OSM–2012–0015–0001). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 5, 2012. We received comments from three Federal agencies.

During our review of the amendment, we identified concerns relating to two provisions of the Utah Administrative Code (UAC) at R643–874–160 and R643–875–200. Both provisions specify contractor eligibility criteria for abandoned mine land reclamation projects (general requirements and noncoal reclamation requirements, respectively). The UAC references Federal regulations for those contractor eligibility criteria. The references are currently incorrect due to changes in the Federal Program approved on December 3, 2007 (72 FR 68029) and November 14, 2008 (73 FR 67630). We notified Utah of the concerns by email dated October 4, 2012 (Administrative Record No. OSM–2012–0015–0009). Utah responded in a letter dated November 2, 2012, by submitting a supplemental amendment proposal (Administrative Record No. OSM–2012–0015–0008).

Utah now proposes revisions to update R643–874–160 and R643–875–200 to reference the current Federal contractor eligibility requirements. Specifically, Utah proposes to replace its reference to 30 CFR ''773.15(b)(1),'' which no longer exists, with reference to 30 CFR ''773.12 through 773.14.''

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *www.regulations.gov*. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2012.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2012–29970 Filed 12–11–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1062]

RIN 1625–AA09

Drawbridge Operation Regulation; Bear Creek, Dundalk, MD

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning the proposed change to regulations governing the operation of the Baltimore County highway bridge at Wise Avenue across Bear Creek, mile 3.4, between Dundalk and Sparrows Point, MD. The proposed change would have altered the current four hour advance notice requirement for a bridge opening to a 48-hour advance notice for a bridge opening.

DATES: The notice of proposed rulemaking is withdrawn on December 12, 2012.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–1062 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone 757–271–1016, email *Bill.H.Brazier@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2012, we published a Notice of Proposed Rulemaking entitled ''Drawbridge Operation Regulation; Bear Creek, Dundalk, MD'' in the **Federal Register** (77 FR 5201). The rulemaking concerned would alter the current four hour advance notice requirement for a bridge opening, found in 33 CFR 117.543(b), to a 48-hour advance notice.

Baltimore County requested to reduce the necessity for bridge openings based on bridge logs provided over a two year period. However, prior to the publication of the notice of proposed rulemaking the bridge owner displayed on the Wise Avenue Bridge signage that stated a 48-hour advance notice was required to open the draw bridge. This signage portrayed improper operational information since the current operation regulation had not changed. The Coast Guard determined the signage that stated a 48-hour advance notice was required for a bridge opening was misleading to the public and navigational users.

Withdrawal

Baltimore County, responsible for the operation of the Wise Avenue Bridge, had requested advance notification of vessel openings. Following publication of the notice of proposed rulemaking, the Coast Guard received two comments opposing changes to the regulation. Both comments felt the 48-hour advance notice was unnecessary and too burdensome to the waterway users. One of the comments stated signage had been placed on the bridge providing information misleading to the public. Baltimore County admitted establishing signage on the bridge prior to the publication of the notice of proposed rulemaking citing the bridge would open with a 48-hour notice prior to approval from the regulatory process. The second comment stated that a 24-hour advance notice would be better than the proposed 48 hours. Due to the bridge owner displaying misleading and inaccurate signage during a public comment period and prior to any change in the bridge opening regulations, the Coast Guard is withdrawing the proposed rule. The owner may, however, request a new notice of proposed rulemaking for a future period in which the inaccurate signage is not posted.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: December 4, 2012.

Steven H. Ratti,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–30001 Filed 12–11–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2009–0234; EPA–HQ–OAR–2011–0044; FRL–9762–1]

RIN 2060–AR62

Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the November 30, 2012, proposed ''Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units'' is being extended by 7 days.

DATES: The public comment period for the proposed rule published November 30, 2012 (77 FR 71323), is extended by 7 days to January 7, 2013.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the proposal for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

World wide Web. The EPA Web sites for this rulemaking are at: *http://www.epa.gov/airquality/powerplanttoxics/actions.html* or *http://www.epa.gov/ttn/atw/utility/utilitypg.html.*

FOR FURTHER INFORMATION CONTACT: For the national emission standards for hazardous air pollutants (NESHAP) action: Mr. William Maxwell, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–5430; Fax number: (919) 541–5450; Email address: *maxwell.bill@epa.gov.* For the new source performance standard (NSPS) action: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division, (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–4003; Fax number (919) 541–5450; Email address: *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The Office of the Federal Register inadvertently published the November 30, 2012, proposed ''Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units'' in the ''Rules and Regulations'' section of the **Federal Register**, rather than in the ''Proposed Rules'' section. The Office of Federal

Register issued a correction document on December 5, 2012 (77 FR 72294). The EPA has decided to extend the public comment period by an additional 7 days in light of the clerical error. Therefore, the public comment period will end on January 7, 2013, rather than on December 31, 2012.

How can I get copies of this document and other related information?

The EPA has established the official public dockets No. EPA–HQ–OAR–2011–0044 (NSPS action) and No. EPA–HQ–OAR–2009–0234 (NESHAP action). The EPA has also developed Web sites for this proposed rulemaking at the addresses given above.

Dated: December 6, 2012.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2012–29973 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27 and 73

[GN Docket No. 12–268; DA 12–1916]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: The Media Bureau extends the deadline for filing comments and reply comments on the Notice of Proposed Rulemaking (''NPRM'') in this proceeding which was published in the **Federal Register** on November 21, 2012. The extension will provide commenters with sufficient time to prepare comments and reply comments in response to the NPRM.

DATES: The comment and reply comment period for the proposed rule published at 77 FR 69933, November 21, 2012 is extended. Submit comments on or before January 25, 2013 and reply comments on or before March 12, 2013.

ADDRESSES: You may submit comments, identified by MB Docket No. 12–268, by any of the following methods:

- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Edward Smith at (202) 418–1890, *Edward.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Order in Docket No. 12–268, DA 12–1916, adopted and released on November 29, 2012, which extends the comment and reply comment deadlines established in the NPRM published under FCC No. 12–118 at 77 FR 69933, November 21, 2012. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), 202–418–0432 (TTY).

Summary of the Order

1. On October 2, 2012, the Commission released a Notice of Proposed Rulemaking (''NPRM'') to implement an incentive auction of broadcast television spectrum. The NPRM set deadlines for filing comments and reply comments at December 21, 2012, and February 19, 2013, respectively.

2. On November 20, 2012, the National Association of Broadcasters (NAB) and CTIA—The Wireless Association (CTIA) filed a joint request to extend the comment and reply comment deadlines to January 25, 2013 and March 26, 2013. NAB and CTIA state that an extension of time is warranted due to the complex economic, engineering, and policy issues presented by the NPRM. We grant the requested extension. As set forth in § 1.46 of the Commission's rules, the Commission's policy is that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. In this case, however, an extension of the comment periods is warranted to provide commenters with sufficient time to prepare comments and reply comments that fully respond to the NPRM.

3. Accordingly, *it is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and §§ 0.61, 0.283, and 1.46 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.46, the Motion for Extension of Time filed by NAB and CTIA *is granted,* and the deadlines to file comments and reply comments in this proceeding are extended to January 25, 2013 and March12, 2013, respectively.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2012–29962 Filed 12–11–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–BC44

[Docket No. 120814337–2337–01]

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C–12–09 of the Inter-American Tropical Tuna Commission (IATTC) by establishing limits on commercial retention of bluefin tuna by U.S. fishing vessels operating in the Eastern Pacific Ocean in 2012 and 2013. This action is necessary for the United States to satisfy its obligations as a member of the IATTC and to reduce overfishing of the stock.

DATES: Comments must be submitted in writing by January 11, 2013. A public hearing will be held at 1 p.m. to 4 p.m. PDT, January 11, 2013, in Long Beach, CA.

ADDRESSES: You may submit comments on this document, identified by NOAA–

NMFS–2012–0172, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0172 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to Heidi Taylor, NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2012–0172'' in the comments.

• *Fax:* 562–980–4047; Attn: Heidi Taylor.

• *Public hearing:* The public is welcome to attend a public hearing and offer comments on this rule on January 11, 2013 from 1 p.m. 4 p.m. at 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The public may also participate in the public hearing via conference line: 1–888–760–6181; participant passcode: #7600181.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will only be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS SWR and by email to *OIRA_Submission@omb.eop.gov,* or faxed to (202) 395–7285. Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available at *http://swr.nmfs.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS SWR, 562–980–4039.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. The full text of the 1949 Convention is available at: *http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf*. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area (defined as the waters of the eastern Pacific Ocean (EPO)). Since 1998, conservation resolutions implemented within the IATTC have further defined the Convention Area as the area bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years, and regularly assesses the status of tuna and billfish stocks in the EPO to determine appropriate harvest limits or other measures to prevent overexploitation of these stocks and to promote viable fisheries. Current IATTC membership includes: Belize, Canada, China, Chinese Taipei (Taiwan), Colombia, Costa Rica, Ecuador, El Salvador, the European Union, France, Guatemala, Japan, Kiribati, the Republic of Korea, Mexico, Nicaragua, Panama, Peru, the United States, Vanuatu, and Venezuela. Bolivia and the Cook Islands are cooperating non-members.

International Obligations of the United States Under the Convention

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951–962) directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate such regulations as may be necessary to implement recommendations adopted by the IATTC. The authority to promulgate such regulations has been delegated to NMFS.

IATTC Decisions in 2012

At its 83rd Meeting, in June 2012, the IATTC adopted by consensus Resolution C–12–09, Conservation and Management Measures for Bluefin Tuna in the EPO. All active resolutions and recommendations of the IATTC are available on the following Web site: *http://iattc.org/ResolutionsActiveENG.htm*.

The main objective of Resolution C–12–09 is to conserve Pacific bluefin tuna (*Thunnus orientalis*) by establishing limits on the commercial catches of in the EPO. Before Resolution C–12–09, the IATTC had not adopted harvest limits for Pacific bluefin tuna in the EPO. In particular, the IATTC recognizes the need to reduce the mortality of juvenile Pacific bluefin tuna. The IATTC emphasizes that the measures in Resolution C–12–09 are intended as an interim means for assuring viability of the Pacific bluefin tuna resource. Future conservation measures should be based in part on development of future scientific information and advice of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean and the IATTC scientific staff. Table 1 below shows the United States commercial catch of Pacific bluefin tuna for the years 1999 to 2009 in the EPO. At this time, landings in 2010 cannot be reported due to data confidentiality.

TABLE 1—UNITED STATES COMMERCIAL CATCH OF PACIFIC BLUEFIN TUNA IN THE EPO

[In metric tons]

Year	Pacific bluefin tuna catch (in metric tons)
1999	186
2000	313
2001	196
2002	11
2003	36
2004	10
2005	207
2006	1
2007	45
2008	1
2009	415
2010	.....

Source: PacFIN, extracted Aug. 16, 2011.

In 2010, the Western and Central Pacific Fisheries Commission (WCPFC) adopted conservation and management measures for Pacific bluefin tuna to ensure that the current level of fishing mortality rate is not increased. Resolution C–12–09 complements action taken by WCPFC in 2010 that set effort quotas in the western central Pacific Ocean. The combination of Resolution C–12–09 and the WCPFC effort quotas are an important step for reducing the overfishing of bluefin tuna. In 2011, NMFS determined overfishing is occurring on Pacific bluefin tuna based on stock assessment results of the International Scientific Committee (76

FR 28422 (May 17, 2011)). NMFS recommended that domestic and international actions should be developed to end overfishing and rebuild the affected stock.

Proposed Action

NMFS is proposing to implement domestically Resolution C–12–09, which provides for the conservation and management of Pacific bluefin tuna in the EPO through the following methods: retention of bluefin tuna by all United States commercial fishing vessels in the EPO shall be prohibited (i) for the remainder of 2012 when 500 metric tons has been harvested by the United States commercial fishing vessels, and (ii) for the remainder of 2013 when 10,000 metric tons has been harvested by the commercial fishing vessels of all countries in 2012 and 2013 combined. The 2013 prohibition will not be effective unless and until the annual commercial harvest of Pacific bluefin tuna by the United States fleet has reached 500 metric tons.

To clarify, the United States commercial fishery may catch more than the 500 metric tons in 2013, provided the 10,000 (2012 and 2013 combined) metric ton limit by the international fleet is not reached. However, if the 10,000 metric ton limit is reached, then the United States commercial fishery may catch up to a total of 500 metric tons of Pacific bluefin tuna.

Announcement of the Limit Being Reached

To help ensure that the total catch of Pacific bluefin tuna in the EPO does not exceed the catch limit for each year, NMFS will report United States catch to the IATTC Director on a monthly basis. The IATTC Director, in turn will communicate on a regular basis the current catch levels and will inform the members of the IATTC when the total annual catch limit is reached. If NMFS determines, based on the information provided by the IATTC Director, that the applicable limit is imminent by a specific future date in that year, NMFS will publish a notice in the **Federal Register** announcing that specific restrictions will be effective on that specific future date until the end of the calendar year. Additionally, if the United States commercial fishing fleet has already caught 500 metric tons or more of Pacific bluefin tuna in 2012 or 2013 and the overall catch limit is reached, NMFS will publish a notice in the **Federal Register** announcing that restrictions will be effective immediately through the end of the calendar year. Under the authority of the Tuna Convention Act, fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the **Federal Register**. This includes necessary additional notifications to inform the public on an action that may impact the United States commercial fishing fleet. Specifically, 50 CFR 300.20, which implements the Tuna Convention Act, states the following:

''The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.''

NMFS will also endeavor to make publicly available, such as on a Web site, regularly updated estimates and/or forecasts of Pacific bluefin tuna catches in order to help fishermen plan for the possibility of the limit being reached.

The commercial catch limitation would go into effect in 2012, and remain in effect through 2013 unless the IATTC decides to remove or modify the measure in 2013. NMFS expects controls on fishing for Pacific bluefin tuna in the ETP to be included by the IATTC in future resolutions.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act of 1950 and other applicable laws, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the (RFA), 5 U.S.C. section 601 note. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed rule would apply to owners and operators of United States commercial fishing vessels that catch Pacific bluefin tuna in the IATTC Convention Area. It is important to note that no United States commercial vessels specialize in harvesting bluefin tuna in the EPO. Bluefin tuna is caught commercially, on an irregular basis; by small coastal purse seine vessels operating in the Southern California Bight with limited additional landings by the drift gillnet fleet that targets swordfish and thresher shark. The Pacific bluefin commercial catch limitations are not expected to result in a closure of the United States fishery because catches from recent years have not reached the 500 metric tons. The last year the United States exceeded 500 metric tons was 1998. Refer to Table 1 (found above) for United States commercial catch of bluefin in the EPO for years 1999 to 2010.

The United States West Coast catch of bluefin tuna represents a relatively minor component of the overall EPO tuna catch. The number of purse seine vessels that have landed tuna in California averaged 197 annually between 1981–90, but declined to an annual average of 11 in the 2001–2010 period. The decline in the number of domestic vessels is correlated in part with the relocation of large cannery operations. Currently there are no canneries functioning as primary offloaders of tuna in California.

As part of the IRFA, the proposed rule impacts to small entities in the IATTC Convention Area were analyzed. The United States West Coast vessels (all gear types) operating in the EPO averaged annual landings of 113 metric tons of PBF during 2000–2011. The annual average catch of PBF had an ex-vessel value of $175,892 (unadjusted for inflation) during 2000–2011. About 66 percent of this value was attributed to small coastal pelagic purse seiners that opportunistically target bluefin tuna in EPO, thus any bluefin tuna conservation measures primarily affect these vessels. Small purse seiners averaged 98 metric tons of bluefin tuna landings per year, with a range from zero to 411 metric tons per year during 2000–2011. There were up to six small purse seiners opportunistically targeting bluefin tuna in any one year during 2000–2011. Bluefin tuna is also incidentally caught and landed by large mesh drift gillnet vessels in small quantity. The landings of bluefin tuna by longline and albacore surface hook-and-line vessels operating in EPO have been negligible in recent years.

For the vessels (all gear types) that caught bluefin tuna, the share of revenue from bluefin tuna relative to the revenues from all species ranged from 0.11 percent to 6.96 percent during 2000–2011. The share of revenue from bluefin tuna averaged 2.42 percent relative to the revenue from the portfolio of all species for the vessels

that landed bluefin tuna during 2000–2011. Given the number of active vessels during that period (average 45 boats per year of all gear types), annual revenue per boat from the bluefin tuna averaged $3,866.

The described bluefin tuna catch limit for the United States in the IATTC Convention Area will remain in force for 2012 and 2013. Approximately two small purse seiners per year on average have the potential to be affected by this proposed rule when adopted. All fisheries, whether they opportunistically target bluefin tuna or catch it incidentally, would be able to fish in the normal manner without any material changes in operations or associated revenues. The proposed rule is not expected to result in any change in fishing operations or any significant reduction in associated revenues. The economic effect of bluefin tuna catch limitation to the United States commercial fleet and small entities from the IATTC Convention Area in EPO will not be significant.

NMFS compared the effects of the bluefin tuna provisions proposed in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations to limit United States commercial catches of bluefin tuna in the IATTC Convention Area as stipulated in Resolution C–12–09. Under this alternative, there would be no effects to vessel owners compared to the status quo. Based on recent bluefin tuna catch data and expected future trends, it is unlikely that there would be any benefit from not implementing the bluefin tuna provisions; however, the United States would not be implementing Resolution C–12–09 and would therefore not be satisfying its international obligations as a member of the IATTC.

List of Subjects in 50 CFR Part 300

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

Dated: December 6, 2012.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

2. In § 300.24, a new paragraph (u) is added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Target or retain Pacific bluefin tuna in the IATTC Convention Area by any United States vessel engaged in commercial fishing after the date specified by the Regional Administrator's notification of closure issued under § 300.25 (h).

3. In § 300.25, a new paragraph (h) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(h) *Bluefin tuna commercial catch limits in the eastern Pacific Ocean.*

(1) After the date specified in a notice published by Regional Administrator in the **Federal Register,** a United States vessel engaged in commercial fishing may not target or retain Bluefin tuna in the Convention Area for the remainder of the calendar year. NMFS will publish such a notice prohibiting further targeting and retention of bluefin tuna on the projected date

(i) for the remainder of 2012 when the United States commercial vessels in the Convention Area has already met or exceeded 500 metric tons, or

(ii) for the remainder of 2013 when 10,000 metric tons or more have been harvested by the commercial fishing vessels of all countries in 2012 and 2013 combined. The 2013 prohibition will not be effective unless and until the annual commercial harvest of Pacific bluefin tuna by the United States fleet has reached 500 metric tons.

(2) [Reserved]

[FR Doc. 2012–29968 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 239
Wednesday, December 12, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Altered system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to alter a system of records maintained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, entitled ''USAID–33, Phoenix Financial Management System''. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 522a(e)(4)). System addresses have been expanded.

DATES: Public comments must be received on or before January 25, 2013. Unless comments are received that would require a revision; this update to the system of records will become effective on January 25, 2013.

ADDRESSES: You may submit comments:

Paper Comments

- *Fax:* (703) 666–5670.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

Electronic Comments

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Email: privacy@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact, USAID Privacy Office, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202. Email: *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: The Phoenix Financial Management System was established as an Agency-wide system of record since it is required to collect, maintain or store personal data requiring protection under the Privacy Act. It is USAID's core financial management system and accounting system of record. Phoenix enables USAID to effectively and efficiently analyze, allocate and report on U.S. foreign assistance funds. Phoenix includes modules such as General Ledger, Accounts Payable, Accounts Receivables, and Budget Execution, which are required to perform necessary accounting operations. Phoenix falls under strict regulatory audit requirements from the Office of Management and Budget, as well as the General Accountability Office.

Dated: December 3, 2012.

William Morgan,

Chief Information Security Officer—Chief Privacy Officer.

USAID–33

SYSTEM NAME:

Phoenix Financial Management System.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATIONS:

(1) Beltsville Information Management Center (BIMC), 8101 O'Dell Rd., Beltsville, MD 20705—DRP Servers.

(2) Global Financial Service Center (GFSC—DoS), 1969 Dyess Ave., Building A, Computer Room 2A228, Charleston, SC 29405—Production Servers.

(3) Terremark, 50 Northeast 9th Street, Miami, FL 33132—Terremark Data Center Reporting, Development and Test Servers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of current employees, contractors, personal service contractors (PSCs), consultants, partners, and those receiving foreign assistance funds.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system contains USAID organizational information. Phoenix imports the following data elements from NFC Payroll files for Personnel Services Contractors (PSC) and direct hires: Name, social security number, details of payroll transactions and work phone numbers. Phoenix imports the following data elements from the E2 Travel system for each traveler: Name, date of travel (month/year) and destination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Privacy Act of 1974 (Pub. L. 93–579), sec. 552a(c), (e), (f), and (p).

PURPOSE(S):

Records in this system will be used:

(1) The payroll information is used to associate PSC payroll-related payments with their contracts and track direct hire payroll payments in the system in order to produce 1099 files. If this information is not imported form NFC to Phoenix, then USAID cannot comply with IRS regulations to maintain and produce 1099s.

(2) The travel information is used to associate E2 travel records with Phoenix accounting information regarding travel authorization and funding.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USAID may disclose relevant system records in accordance with any current and future blanket routine uses established for its record systems. These may be for internal communications or with external partners.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records are not disclosed to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained in user-authenticated, password-protected systems.

RETRIEVABILITY:

All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties. Information is retrieved by name or by a system specific ID (Vendor ID, Traveller ID, etc.). SSN is not employed as a key, but only present for tax reporting purposes.

SAFEGUARDS:

Administrative, managerial and technical controls are in place. Phoenix has a current Security Assessment and Authorization (A&A) in place. Phoenix is secured through access control provided to only those individuals with a need to know within the Agency. Further, access to the PII is limited to the staff within the CMP and CAR divisions. Phoenix is maintained by the U.S. government, not contractors.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved National Archives and Records Administration Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

David Ostermeyer, United States Agency for International Development, U.S. Department of State Annex 44, 455, 301 4th Street SW., Washington, DC 20547.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on them must send the request in writing to the Chief Privacy Officer, USAID, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202. The request must include the requestor's full name, his/her current address and a return address for transmitting the information. The request shall be signed by either notarized signature or by signature under penalty of perjury and reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to a record must submit the request in writing according to the ''Notification Procedures'' above. An individual wishing to request access to records in person must provide identity documents, such as government-issued photo identification, sufficient to satisfy the custodian of the records that the requester is entitled to access.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself must identify the information to be changed and the corrective action sought. Requests must follow the ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

The records contained in this system will be provided by and updated by the individual who is the subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Meredith Snee,

Privacy Analyst.

[FR Doc. 2012–29994 Filed 12–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Arapaho-Roosevelt National Forest Visitor Surveys for Recreation Transportation System Alternatives Study

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Arapaho-Roosevelt National Forest Visitor Surveys for Transportation System Alternatives Study.

DATES: Comments must be received in writing on or before February 11, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Carol Kruse, 2150 Centre Ave-Building E, Fort Collins, CO 80526.

Comments also may be submitted via facsimile to (970) 295–6696, ATTN: Carol Kruse, or by email to: *ckruse@fs.fed.us.*

The public may inspect comments received at the Arapaho-Roosevelt Supervisor's Office, 2150 Centre Ave-Bldg E, Fort Collins, CO 80526 during normal business hours. Visitors are encouraged to call ahead to 970–295–6663 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Carol Kruse, Special Projects Coordinator, Arapaho-Roosevelt National Forest, 970–295–6663.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Arapaho-Roosevelt National Forest Visitor Surveys for Recreation Transportation System Alternatives Study.

OMB Number: 0596–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: New.

Abstract: With over 5.4 million recreation visits annually, the Arapaho-Roosevelt is one of the most visited national forests in the nation. Encompassing both sides of the Continental Divide and the urban Front Range, from the Denver area to the Wyoming border, the Arapaho-Roosevelt urban forest provides outdoor recreation opportunities, services, and facilities to the residents of Colorado and visitors throughout the nation and around the world.

The population of the Front Range metropolitan area served by the Arapaho-Roosevelt National Forest is approximately 3.3 million and is predicted to double in the next 25 years. The demand for access to recreational facilities within the forest is expected to increase at nearly the same rate. Three Front Range recreation sites, Brainard Lake Recreation Area (including the Indian Peaks Wilderness), Mount Evans Recreation Area, and the Guanella Pass area are already experiencing resource damage and a reduction in the quality of visitor experience due to heavy use. As access demands increase, resource conditions and the quality of visitor experience are anticipated to decline even further.

The Forest Service is evaluating the potential for the addition of alternative transportation to existing recreation transportation systems accessing these sites. The purpose of this evaluation is to determine if this addition will help the Agency better manage its recreation opportunities and resources, thereby improving its delivery of services to an ever-increasing public. The Forest Service received a grant from the Paul S. Sarbanes Transit in Parks Program in 2010 to conduct research at the three aforementioned recreation sites. This program will help the Agency make the determination as to what mode(s) of alternative transportation would improve service delivery, resource management, and visitor experience quality. At the present time, data pertaining to traffic, parking, and resource conditions are being collected. In the summer of 2013, the Forest Service will collect feedback from visitors to assess their opinions about potential changes in the transportation system and the impact it would have on their recreation experience.

Under the following authorities, the Forest Service is obligated to actively solicit public input to improve National Forest System lands management to better serve the public:

1. Forest Service Administration Organic Act of 1897 [16 U.S.C. 473–478, 479–482, and 551] as amended,

2. Transfer Act of 1905 [16 U.S.C. 472, 524, 554], the Multiple Use Sustained Yield Act of 1960 [16 U.S.C. 528],

3. Forest and Rangeland Renewable Resources and Planning Act of 1974 [16 U.S.C. Chapter 36] as amended,

4. National Forest Management Act of 1976 [16 U.S.C. 1600] as amended,

5. Government Performance and Results Act of 1993 [Pub. L. 103–62] as amended,

6. Executive Order 12862 of September 11, 1993,

7. 1997 Revision of the Land and Resource Management Plan for the Arapaho and Roosevelt National Forests and Pawnee National Grassland,

8. and Executive Order 13571 of April 27, 2011.

In addition to the three aforementioned sites, this information collection will be administered at the gateway to the Indian Peaks Wilderness. The respondents for this data collection survey will be recreational visitors, ages 18 years and older, at the four previously mentioned sites during the summer of 2013 data collection period. During that summer, interviewers will query visitors at the end of their experience to find out if they are willing to participate in the survey. If they do participate, the interviewer will keep a record of the respondent's answers. Each visitor will complete only one survey per visit, and participation is strictly voluntary. The information will be collected by a private contractor, on behalf of the Forest Service, who has working relationship with Colorado State and Utah State Universities.

These surveys will be designed to collect data on the following:

1. Visitor experience (including perceptions of crowding, etc.),

2. Visitor travel (including trip information such as origination point, source of pre-visit information, etc.),

3. Mode choice (including potential transportation system scenarios),

4. Group characteristics (including number of people in the group, age groups, etc.), and

5. Socio-demographic data.

The primary analysis of the data will be conducted by the private contractor and their university associates on behalf of the Forest Service, Federal Highway Administration—Central Federal Lands, and the Volpe National Transportation Systems Center. All results will be compiled in such a way to prevent responses from being correlated to respondents.

The data analysis will help area managers better serve the public by translating visitor input into future strategic plans for these sites. This includes efforts focused on developing more effective and efficient delivery of program services at all four sites through more productive resource allocation. As a result, Forest Service recreational and transportation program management goals and objectives may be modified which could require Forest Service plan revisions.

The data analysis of the collected information will be included in a management report prepared for the Forest Service and shared with stakeholders and other interested parties. The results may also be published in scientific journals and/or included in presentations at professional meetings and conferences. The Agency may get requests for this information from the public and other interested organizations which could include, Congressional staffs, newspapers, magazines, transportation organization, and/recreational organizations.

As noted previously, intensive visitor use at these four sites are threatening the resource and recreation management objectives for these areas, as specified in the Forest Land and Resource Management Plan and various other site management plans. Previous planning studies have recommended alternative transportation strategies to help minimize the impact of intensive visitor use on Agency resources and visitor experience quality. The feasibility and public opinion as it relates to these recommendations have not yet been analyzed. Consequently, the Forest Service has not been able to implement transportation improvements that could help meet resource and recreation management objectives for these areas. Without this analysis, the Agency will continue to lack the information necessary to identify and implement feasible and publicly-accepted transportation improvements to help protect forest resources and enhance visitor experiences as required by the Forest Land and Resource Management Plan. Finally, these information collections will directly impact Agency resources and visitor experience quality and help the Forest Service to meet its resource and recreation management mandates.

It is estimated that 1,275 people will be contacted at Guanella Pass (425 people for each of 3 surveys); 1,275 people will be contacted at Mount Evans (425 people for each of 3 surveys); and 1,700 will be contacted at Brainard Lake Recreation Area (425 people for each of 4 surveys). Those 4,250 contacts will each require 1 minute of public burden. Of the 425 contacted for each survey at each site, it is estimated that 300 people will be willing to respond to each survey at each site, or 3,000 contacts (300 x 10 surveys total), requiring an additional 10 minutes each for those 3,000 visitors to respond to survey questions.

Estimate of Annual Burden: 11 minutes.

Type of Respondents: The respondent population for this data collection survey will be recreational visitors, ages 18 years and older, at these sites during the data collection period.

Estimated Annual Number of Respondents: 4,250.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 570 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 4, 2012.

James M. Pẽna,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–29927 Filed 12–11–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: National Visitor Use Monitoring

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information

collection, OMB 0596–0110, National Visitor Use Monitoring.

DATES: Comments must be received in writing on or before February 11, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Donald B.K. English, Recreation, Heritage, and Volunteer Resources, Mailstop 1125, USDA Forest Service, 1400 Independence Ave. SW., Washington, DC 20250–1125.

Comments also may be submitted via facsimile to 202–205–1145 or by email to: *denglish@fs.fed.us.*

The public may inspect comments received at Room 400, Rosslyn Plaza Building C, 1601 North Kent Street, Arlington, VA 22209 during normal business hours. Visitors are encouraged to call ahead to 202–205–9595 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Donald B.K. English, Recreation, Heritage, and Volunteer Resources staff, 202–205–9595.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Visitor Use Monitoring.

OMB Number: 0596–0110.

Expiration Date of Approval: 06/30/2013.

Type of Request: Extension with revision of a currently approved information collection.

Abstract

The Government Performance and Results Act of 1993 require Federal agencies to establish measurable goals and monitor their success at meeting those goals. Two of the items the Forest Service must measure are: (1) The number of visits that occur on the National Forest System lands for recreation and other purposes, and (2) the views and satisfaction levels of recreational visitors to National Forest System lands about the services, facilities, and settings. The Agency receives requests for this kind of information from a variety of organizations, including Congressional staffs, newspapers, magazines, and recreational trade organizations.

The data from this collection provides vital information for strategic planning efforts, decisions regarding allocation of resources, and revisions of land and resource management plans for national forests. It provides managers with reliable estimates of the number of recreational visitors to a national forest, activities of those visitors (including outdoor physical activities), customer satisfaction, and visitor values. The knowledge gained from this effort helps identify recreational markets as well as the economic impact visitors have on an area. The information collected is also used by the Office of Management and Budget as part of the Program Analysis Reporting Tool measures for the Forest Service recreation program. For the Forest Service, the collection is designed for a five-year cycle of coverage across all national forests. Conducting the collection less frequently puts information updates out of cycle with forest planning and other data preparation activities.

In addition, the U.S. Department of Interior (USDOI) Bureau of Land Management (BLM) anticipates partnering with the Forest Service, pending funding availability, to conduct further field testing of the National Visitor Use Monitoring (NVUM) survey and estimation protocol as a means for estimating the volume of visitation and describing key visitor characteristics. BLM lands are often adjacent to Forest Service lands, and patterns of visitor access are similar to those of the Forest Service. As well, BLM's information and reporting needs closely mirror those of the Forest Service.

At the recreation sites or access points, agency personnel or contractors will conduct onsite interviews of visitors as they complete their visit. Interviewers will ask about the purpose and length of the visit, the trip origin, activities, annual visitation rates, trip-related spending patterns, use of recreation facilities, satisfaction with agency services and facilities, and the composition of the visiting party. Primary analysis of the information for the Forest Service and partnering agencies will be performed by Forest Service staff in the Washington Office and by scientists in one or more of the agency's research stations.

Estimate of Annual Burden: 9 minutes (average).

Type of Respondents: Visitors to lands managed by the U.S. Forest Service and/or Bureau of Land Management.

Estimated Annual Number of Respondents: 60,900.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 8,760 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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 the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 3, 2012.

James M. Pẽna

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–29928 Filed 12–11–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce-Clearwater National Forests; Idaho; Crooked River Valley Rehabilitation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The forest gives notice of its intent to prepare an Environmental Impact Statement for the Crooked River Valley Rehabilitation Project. The Red River Ranger District of the Nez Perce-Clearwater National Forests is undergoing planning efforts to restore the lower Crooked River valley near Elk City, Idaho. The Environmental Impact Statement will analyze the effects of the proposed action and alternatives. The Nez Perce-Clearwater Forests invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by 45 days after the date of publication in the **Federal Register**. The draft environmental impact statement is expected October 2014 and the final

environmental impact statement is expected September 2015.

ADDRESSES: Send written or electronic comments to Attn: Jennie Fischer, Interdisciplinary Team Leader; Nez Perce-Clearwater National Forest; 104 Airport Road, Grangeville, ID 83530. Send electronic comments via email to: *comments-northernnezperce-red-river@fsled.us,* or via facsimile to 208–983–4099. Subject: Crooked River Valley Project.

The Nez Perce National Forest has scheduled public meetings, to be held in two separate locations, to introduce this project and discuss the most effective ways the public can become involved. Meetings will take place in Elk City and Grangeville, Idaho in January, 2013. Additional information will be provided in the local newspaper prior to meeting times.

FOR FURTHER INFORMATION CONTACT: Jennie Fischer, Interdisciplinary Team Leader, 104 Airport Road, Grangeville, ID 83530; 208–983–4048. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. Detailed information about this project is also available by visiting our project Web site: *http://www.fs.fed.usinepa/fs-usda-pop.php/?project=40648.*

SUPPLEMENTARY INFORMATION: Project location is on the Red River Ranger District, Nez Perce-Clearwater National Forests, Idaho County, Idaho; approximately 6 miles southwest of Elk City, Idaho. The project boundary extends from the Idaho Department of Fish and Game, fish weir near the mouth of Crooked River about 6 miles south to the confluence of Crooked River and Relief Creek. The project boundary also includes the Road 1803 from the junction with Road 222 road along Red River; and Road 522 to the junction with Road 223 along Crooked River.

Purpose and Need for Action

During the 1930s through the 1950s the lower two miles of the Crooked River Valley were heavily impacted by dredge mining, leaving behind large tailing piles and deep ponds throughout the valley bottom. Gold and silver mining affected most of the valley bottom along the mainstem of Crooked River. Physical changes to the valley bottom have altered stream and riparian process, and have affected aquatic and terrestrial habitat conditions, resulting in degraded ecosystem conditions relative to historical conditions. There is a need to restore the Crooked River valley bottom and stream channel to provide habitat for Endangered Species Act-listed fish. This would be achieved by removing the majority of the tailing piles and re-constructing the river and its floodplain to create natural stream sinuosity and morphology; to restore floodplain and hydrologic process; to construct instream channel structures to provide spawning and rearing habitat for steelhead, spring/summer Chinook salmon, bull trout, and cutthroat trout; and to restore riparian areas.

The county portion of the Crooked River Road runs approximately 12 miles from state Highway 14 to the town of Orogrande, Idaho. The road is under the jurisdiction of Idaho County and is also designated as a National Forest System Road (NFSR)—Road 233. The road follows Crooked River for its entire length and is within the floodplain of Crooked River for approximately 3 miles through the ''narrows''. Through the narrows section the road constricts Crooked River, delivers sediment from the road surface, and often floods during spring runoff. Crooked River Road 233 prism is within the bankfull floodplain of Crooked River for much of its length and floods and fails during spring runoff. The road is narrow, providing only one way traffic with soft shoulders along the river. The proximity of the road to the river channel facilitates sediment delivery to the river and is difficult to maintain throughout the year. There is a need to improve the floodplain functions of Crooked River, reduce sediment delivery from the road, improve forest visitor safety, and provide easier maintenance of the road.

Proposed Action

The proposed action is to rehabilitate the lower two miles of the Crooked River valley bottom with meanders and re-align 3 miles the Crooked River Road 233 through the narrow canyon on the Red River Ranger District of the Nez Perce-Clearwater National Forests. There are two components of the project: Crooked River Meanders and Crooked River Narrows Road.

Crooked River Meanders

There is a need to restore the valley bottom and stream channel to provide habitat for Endangered Species Act-listed fish. This would be achieved by removing the majority of the tailing piles and re-constructing the river and its floodplain to create natural stream sinuosity and morphology; to restore floodplain and hydrologic process; to construct instream channel structures to provide spawning and rearing habitat for steelhead, spring/summer Chinook salmon, bull trout, and cutthroat trout; and to restore riparian areas.

The proposed action would rehabilitate approximately two valley miles of Crooked River by reshaping mine tailing piles and reconstruct over two miles of stream channel.

- Provide instream habitat structures and quality spawning, rearing and migration habitat for steelhead, spring/summer Chinook salmon, bull trout, and cutthroat trout.
- Provide proper riparian and wetland functions and complexity throughout the project area.
- Maintain campsites in the project area.
- Preserve heritage resource areas as identified by the Forest Service Archeologist and the State Historic Preservation Office.

Crooked River Narrows Road

The current Road 233 prism is within the bankfull floodplain of Crooked River for much of its length. There is a need to improve the floodplain functions of Crooked River, reduce sediment delivery from the road, improve forest visitor safety, and provide easier maintenance of the road.

The proposed action would re-align 3 miles of road within the bottom of the valley to reduce failure potential, and sediment inputs into Crooked River. This would improve maintainability and safety of the road by providing turnouts, wider road base (approx. 16 feet), buffers between the road and the river, graveled road surface, and stable road base.

Implementation of the Crooked River Valley Rehabilitation Project is proposed to take place in 2015–2020.

Possible Alternatives the forest will consider and include the no-action alternative, which will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives that will be developed to meet the purpose and need for action, and to address significant issues identified during scoping. The potential alternatives for the Crooked River Meanders are to restore approximately two miles of valley bottom and rehabilitate over two miles of Crooked River. The potential alternatives for the Crooked River Narrows Road are: (1) Reconstruct the existing roadway, through vertical and horizontal shifts, such that most of roadway is above the 100-year flood-flow elevation; (2) establish a new location and alignment of the Road 233 road between mile posts 2 and 6, such that the new road is entirely above the 100-year flood-flow elevation. The Forest may consider converting the

existing Road 233 to a trail or completely decommissioning the road; or (3) Use/improve an existing alternative road (Road 522 and 1803, from State Highway 14 at the mouth of Red River up to the intersection of Road 233 at the mouth of Relief Creek). The Forest may consider converting the existing Road 233 to a trail or completely decommissioning the road.

Lead and Cooperating Agencies

The Nez Perce-Clearwater National Forests of the USDA-Forest Service is the lead agency. Cooperating agencies include: the Nez Perce Tribe and Bonneville Power Agency.

Responsible Official

Rick Brazell, Forest Supervisor, Nez Perce-Clearwater National Forests, 104 Airport Road, Grangeville, ID 83530 is the responsible official for this proposal.

Nature of Decision To Be Made

The Nez Perce National Forest will decide whether or not to complete the Crooked River Meanders project and the extent of location of stream rehabilitation. The Forest will also decide whether or not to re-align the Crooked River Narrows Road and the extent and location of road reconstruction. The forest will decide what design and mitigation measures and monitoring would be included.

Preliminary Issues identified include the effects to cultural resources, public access, and future road maintenance costs.

Permits or Licenses Required

Permits that may be needed for this project are related to Clean Water Act (CWA) and the Endangered Species Act. If necessary, permits may include: CWA—Section 404 permits from the Corp or Engineers, Stream Alteration Act Permit from Idaho Department of Water Resources, CWA—Section 401 Certification from Idaho Department of Environmental Quality, Incidental Take Permits included as part of the Biological Opinions from NOAA Fisheries and U.S. Fish and Wildlife Service, or CWA—Section 402 NPDES permits from the Environmental Protection Agency.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The U.S. Forest Service uses the process required by the National Environmental Policy Act (NEPA). NEPA requires a systematic, interdisciplinary approach to ensure integrated application of the natural and social sciences and the environmental design arts in any planning and decision making that affects the human environment (42 U.S.C. 4332(2)(A)). Comments are accepted for 45 days after notification in the **Federal Register**.

These comments help identify significant issues and/or eliminate non-significant issues from detailed study in the environmental impact statement. Comments are most useful if they are specific. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal Governments, and organizations and individuals who may be interested in or affected by the proposed action presented in this notice of intent. A draft envronmenal impact statement will be prepared for comment in the future. The second major opportunity for public input will be when the Draft EIS is published. The comment period for the Draft EIS will be 45-days from the date the Envirnmental Protectoin Agency published the notice of availability in the **Federal Register**. The Draft EIS is anticipated to be available for public review in October 2014.

Dated: November 30, 2012.

Rick Brazell,

Nez Perce-Clearwater Forests, Forest Supervisor.

[FR Doc. 2012–29836 Filed 12–11–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–2010]

Foreign-Trade Zone 148—Knoxville, TN, Toho Tenax America, Inc. (Carbon Fiber Manufacturing Authority), Opening of Comment Period on New Evidence

On November 7, 2012, the Foreign-Trade Zones (FTZ) Board approved Subzone 148C at the manufacturing facilities of Toho Tenax America, Inc. (TTA), located in Rockwood, Tennessee, with authority to manufacture carbon fiber for export and oxidized polyacrylonitrile fiber (Board Order 1868, 77 FR 69435, 11/19/2012). Board Order 1868 did not include authority to manufacture carbon fiber for the U.S. market; the request for such authority will continue to be reviewed by the FTZ Board's staff before the staff makes any recommendation to the FTZ Board for a final decision.

On November 16, 2012, the Industrial Development Board of Blount County, grantee of FTZ 148, made a submission to the FTZ Board (incorporating information from TTA) that included new evidence in response to the FTZ staff's preliminary recommendation not to authorize TTA to manufacture carbon fiber for the U.S. market at this time. Public comment is invited on the applicant's new submission through January 11, 2013. Rebuttal comments may be submitted during the subsequent 15-day period, until January 28, 2013. Submissions shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 21013, 1401 Constitution Ave. NW., Washington, DC 20230.

A copy of the applicant's November 16, 2012, submission will be available for public inspection at the address above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: December 6, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–29974 Filed 12–11–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1872]

Reorganization of Foreign-Trade Zone 93 Under Alternative Site Framework, Raleigh/Durham, NC

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

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the

establishment or reorganization of general-purpose zones;

Whereas, the Triangle J Council of Governments, grantee of Foreign-Trade Zone 93, submitted an application to the Board (FTZ Docket 13, 2012, filed 03/07/2012) for authority to reorganize under the ASF with a service area of Chatham, Durham, Franklin, Granville, Harnett, Johnston, Lee, Moore, Orange, Person, Vance, Wake and Warren Counties, North Carolina, within and adjacent to the Raleigh-Durham Customs and Border Protection port of entry. Sites 1 and 1A would be renumbered as Sites 4 and 1, respectively. FTZ 93's Sites 1, 3, and 4 would be categorized as magnet sites, and FTZ 93's existing Site 2 would be categorized as a usage-driven site.

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 16536–16537, 03/21/12) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 93 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 3 and 4 if not activated by November 30, 2017, and to a three-year sunset provision for usage-driven sites that would terminate authority for Site 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by November 30, 2015.

Signed at Washington, DC, this 30th day of November 2012.

Ronald K. Lorentzen,

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

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–29883 Filed 12–11–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Notice of Reinstated Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 27, 2012, the United States Court of Appeals for the Federal Circuit (CAFC) reversed and remanded a decision of the United States Court of International Trade (CIT) and ordered it to reinstate the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation covering the period April 1, 2006, through March 31, 2007, as applied to PSC VSMPO–AVISMA Corporation (VSMPO–AVISMA). *See PSC VSMPO–AVISMA Corp.* v. *United States,* 688 F.3d 751 (Fed. Cir. 2012) (*AVISMA IV*); *see also Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 73 FR 52642 (September 10, 2008) (*Final Results*). On November 20, 2012, the CIT issued final judgment pursuant to the CAFC's remand order in *AVISMA IV* reinstating the final results of administrative review with respect to VSMPO–AVISMA. *See PSC VSMPO–AVISMA Corp.* v. *United States,* Consol. Court No 08–00321, Slip Op. 12–142 (Ct. Int'l Trade November 20, 2012) (*AVISMA V*). Having previously amended the final results of administrative review pursuant to the earlier CIT decision, the Department of Commerce (the Department) is, in accordance with *AVISMA V,* once again amending the final results of the administrative review with respect to VSMPO–AVISMA to reinstate its original determination. *See Final Results.*

DATES: *Effective Date:* March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov 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) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2008, the Department published the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review April 1, 2006, through March 31, 2007. *See Final Results.* In the *Final Results* the Department determined that it was appropriate to treat raw magnesium and chlorine gas manufactured by VSMPO–AVISMA as co-products and to employ a net-realizable-value (NRV) analysis to allocate joint costs incurred up to the split-off point where raw magnesium and chlorine gas become separately identifiable products. The Department calculated a weighted-average dumping margin for AVISMA of 15.77 percent for the period April 1, 2006, through March 31, 2007. *See Final Results,* 73 FR at 52643.

The CIT remanded the *Final Results* to the Department to take into account an affidavit from Dr. George Foster, an accounting professor (the Foster Affidavit), when considering the best methodology for calculating the NRV for the chlorine gas.[1] *See PSC VSMPO–AVISMA Corp.* v. *United States,* Consol. Court No 08–00321, Slip Op. 09–120 (Ct. Int'l Trade October 20, 2009) (*AVISMA I*). In accordance with the CIT's order in *AVISMA I,* the Department admitted the Foster Affidavit into the record, considered the arguments of Dr. Foster upon remand, and, as a result of that consideration, determined not to recalculate the dumping margin for VSMPO–AVISMA upon concluding that Dr. Foster's proposed methodology was not appropriate to use in this case. *See* Results of Redetermination Pursuant to Remand, dated March 30, 2010 (*First Remand*) (available at *http://ia.ita.doc.gov/remands*). As a result, in the *First Remand* the Department used the same allocation methodology it used in the *Final Results.*

In *PSC VSMPO–AVISMA Corp.* v. *United States,* 724 F. Supp. 2d 1308 (Ct. Int'l Trade 2010) (*AVISMA II*), the CIT remanded the *Final Results* again, instructing the Department to consider VSMPO–AVISMA's entire production process, including titanium production, in allocating joint costs to the subject merchandise. The CIT found the Department's cost-allocation methodology in the *Final Results* to be unsupported by substantial record evidence and not in accordance with section 773(e)(1) of the Tariff Act of 1930, as amended (the Act). *See AVISMA II,* 724 F. Supp. 2d at 1313–16. In accordance with the CIT's order in

[1] VSMPO–AVISMA submitted the Foster Affidavit as part of its administrative case brief, dated June 11, 2008, which the Department rejected as untimely new factual information.

AVISMA II, and under respectful protest, the Department reexamined its calculation methodology to take VSMPO–AVISMA's entire production process into account, including the stages of production encompassing and following ilmenite catalyzation, and, based on that examination, the Department recalculated the weighted-average dumping margin for VSMPO–AVISMA. *See* Results of Redetermination Pursuant to Remand, dated November 22, 2010 (*Second Remand*) (available at *http://ia.ita.doc.gov/remands*). As a result of the Department's recalculations, the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation became 8.51 percent for VSMPO–AVISMA. *See Second Remand.* The CIT sustained the Department's *Second Remand* on March 1, 2011. *See PSC VSMPO–AVISMA Corp.* v. *United States,* Consol. Court No 08–00321, Slip Op. 11–22 (Ct. Int'l Trade March 1, 2011) (*AVISMA III*).

On March 11, 2011, consistent with *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010), and pursuant to section 516A(c) of the Act, the Department notified the public that the final CIT judgment in *AVISMA III* was not in harmony with the Department's final determination and amended the final results of the administrative review with respect to VSMPO–AVISMA to reflect the final CIT judgment in *AVISMA III. See Magnesium Metal from the Russian Federation: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision,* 76 FR 13355 (March 11, 2011).

On July 27, 2012, the CAFC reversed and remanded the decision of the CIT and ordered it to reinstate the final results of the administrative review as applied to VSMPO–AVISMA. *See AVISMA IV,* 688 F.3d at 765. In *AVISMA IV,* the CAFC found that the CIT infringed upon the Department's authority to implement and enforce proper procedures for constructing an agency record in its proceedings by requiring the Department to consider the untimely submitted Foster Affidavit. *See id.* at 761–62. Further, in *AVISMA IV,* the CAFC found that the CIT erred in its interpretation of section 773(e)(1) of the Act by mandating the Department to adopt the facility-wise cost allocation methodology and that the Department's choice of accounting methodology in the *Final Results* was supported by substantial record evidence and in accordance with law. *See id.* at 762–65. On November 20, 2012, the CIT issued final judgment implementing the CAFC's remand order in *AVISMA IV* and ordering reinstatement of the *Final Results. See AVISMA V.*

Reinstatement of Final Results

Because *AVISMA V* is a final court decision with respect to VSMPO–AVISMA, the Department is amending the final results of administrative review by reinstating the weighted-average dumping margin established in the *Final Results* for VSMPO–AVISMA. Accordingly, the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation is 15.77 percent for VSMPO–AVISMA. *See Final Results,* 73 FR at 52643. The Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise manufactured and exported during the POR by VSMPO–AVISMA using the assessment rates calculated by the Department in the *Final Results. See id.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 5, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–29990 Filed 12–11–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting the administrative review (AR) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), covering the period of review (POR) November 1, 2010, through October 31, 2011. The mandatory respondents in this AR are: Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). The Department has preliminarily determined that during the POR the respondents in this proceeding have made sales of subject merchandise at less than normal value (NV). The Department is also preliminarily determining that five companies made no shipments.[1]

DATES: *Effective Date:* December 12, 2012.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Lingjun Wang, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870 or (202) 482–2316, respectively.

Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994), remains dispositive.

Preliminary Determination of No Shipments

Of the remaining 20 companies subject to the review, five companies listed in Appendix I timely filed ''no shipment'' certifications stating that they had no entries of subject merchandise during the POR. The Department subsequently confirmed with the U.S. Customs and Border Protection (CBP) the ''no shipment'' claim made by these companies. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix I did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part in these circumstances but, rather,

[1] On June 11, 2012, the Department issued a partial rescission, rescinding the AR for 100 companies for whom requests for review were withdrawn. *See Fresh Garlic From the People's Republic of China: Partial Rescission of the 2010–2011 Antidumping Duty Administrative Review,* 77 FR 36480 (June 19, 2012).

to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[2]

PRC-Wide Entity

Of the remaining 15 companies subject to these preliminary results, ten are not eligible for separate rate status or rescission, as they did not submit separate rate applications or certifications.[3] As a result, these ten companies are under review as part of the PRC-wide entity. For our determination with respect to the PRC-wide entity, *see* the Preliminary Decision Memorandum.[4]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is an NME within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

The Preliminary Decision Memorandum provides a full description of the methodology underlying our conclusions. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department has determined that the following preliminary dumping margins exist for the period November 1, 2010 through October 31, 2011:

Companies	Weighted-average margin (dollars per kilogram)
Hebei Golden Bird Trading Co., Ltd.	1.65
Shenzhen Xinboda Industrial Co., Ltd.	1.96
Qingdao Xintianfeng Foods Co., Ltd.*	1.81
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.*	1.81
Weifang Hongqiao International Logistics Co., Ltd.*	1.81
PRC-Wide Rate	4.71

*These companies which applied for or demonstrated eligibility for a separate rate in this administrative review. The rate for these companies is the simple average of the calculated antidumping duty rates for Golden Bird and Xinboda.

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within ten days of the date of publication of this notice.[5] Unless otherwise notified by the Department, interested parties may submit written comments (case briefs) no later than 30 days after the date of publication of these preliminary results of review and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[6] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.

Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's IA ACCESS by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[7] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date, time and location of the hearing.[8] Parties should confirm by telephone or electronic mail the date, time and location.

Unless the deadline is extended pursuant section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value the FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[9] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

If these preliminary results of review are adopted in the final results, then Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by the review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final rescission of and final results of the review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/

[2] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); *see also* ''Assessment Rates'' section below.

[3] *See* Appendix II for the list of these companies.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration regarding ''Decision Memorandum for the Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated concurrently with these results and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310.

[9] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

importer-specific assessment rates for the merchandise subject to the review.

Also, the Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), 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 PRC-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates (*i.e.,* those companies with no shipments listed in Appendix I), the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of $4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC 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 preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: December 3, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Companies That Have Certified No Shipments

1. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
2. Jinan Farmlady Trading Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Qingdao Sea-line International Trading Co.

Appendix II

List of Companies Subject to the PRC-Wide Rate

1. Foshan Fuyi Food Co., Ltd.
2. Henan Weite Industrial Co., Ltd.
3. Jining Yongjia Trade Co., Ltd.
4. Qingdao Tiantaixing Foods Co., Ltd.
5. Shandong Chenhe Intl Trading Co., Ltd.
6. Shanghai LJ International Trading Co., Ltd.
7. Sunny Import & Export Limited
8. Yantai Jinyan Trading Co., Ltd.
9. Zhengzhou Huachao Industrial Co., Ltd.
10. Zhengzhou Yuanli Trading Co., Ltd.

Appendix III

List of Topics Discussed in the Preliminary Decision Memorandum

Preliminary Determination of No Shipments
Separate Rates
Separate Rate for Non-Selected Companies
PRC-Wide Entity
Surrogate Country
Date of Sale
Fair-Value Comparisons
Export Price
Normal Value
Raw Garlic Bulb Input Valuation
Labor
Financial Ratios
Other Surrogate Values
Currency Conversion

[FR Doc. 2012–29986 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–DS–P

[10] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–988]

Silica Bricks and Shapes From the People's Republic of China: Initiation of Antidumping Duty Investigation

DATES: *Effective Date:* December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, (202) 482–2769 or (202) 482–3627, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 15, 2012, the Department of Commerce (''Department'') received a petition concerning imports of silica bricks and shapes (''silica bricks'') from the People's Republic of China (''PRC'') filed in proper form by Utah Refractories Corporation (''Petitioner'').[1] On November 16, 2012, Petitioner re-filed the petition to correct the bracketing of business proprietary information in certain exhibits. On November 19, 2012, the Department issued a supplemental questionnaire requesting information and clarification of certain areas of the Petition. Petitioner timely filed additional information on November 21, 2012 (''Lost Sales and Revenue Supplement'') and November 26, 2012 (''First Supplement to the Petition''). At the Department's request, Petitioner filed additional information on November 28, 2012 (''Second Supplement to the Petition''). At the Department's request, Petitioner filed further information on December 4, 2012.

Period of Investigation

The period of investigation (''POI'') is April 1, 2012, through September 30, 2012.[2]

The Petition

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioner alleges that imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury

[1] *See* Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People's Republic of China dated November 15, 2012 (''Petition'').

[2] *See* 19 CFR 351.204(b)(1).

to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that, as an interested party, as defined in section 771(9)(C) of the Act, Petitioner filed the Petition on behalf of the domestic industry and has demonstrated sufficient industry support with respect to the Petition (*see* ''Determination of Industry Support for the Petition'' section below).

Scope of Investigation

The products covered by the scope of this investigation are silica bricks from the PRC. For a full description of the scope of the investigation, *see* ''Scope of Investigation'' in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the product for which the domestic industry is seeking relief.[3] Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by December 26, 2012, 5:00 p.m. Eastern Standard Time, 21 calendar days from the signature date of this notice.[4] All comments should be filed on the record of this antidumping investigation using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[5] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of silica bricks to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use in defining unique products. We note that it is not always appropriate to use all product characteristics to define products. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe silica bricks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive comments filed electronically using IA ACCESS by 5:00 p.m. on December 26, 2012. Additionally, rebuttal comments must be received by 5:00 p.m. on January 4, 2013.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[6] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[7]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of

[3] *See* Memorandum to the File from Whitney Schablik, Import Policy Analyst, entitled ''Phone Call to Counsel for Petitioner,'' dated November 21, 2012; *see also* Memorandum to the File from Rebecca Pandolph, International Trade Analyst, Office 4, AD/CVD Operations regarding ''Petition for the Imposition of Antidumping Duties on Imports of Silica Bricks and Shapes from the People's Republic of China: Conference Call'' dated November 29, 2012.

[4] Because the normal 20 day deadline falls on a federal holiday, the appropriate deadline is the next business day.

[5] *See,* generally, 19 CFR 351.303; *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[6] *See* section 771(10) of the Act

[7] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

the information submitted on the record, we have determined that silica bricks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[8]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, Petitioner demonstrated that it was the sole producer of the domestic like product and provided its production quantity for the domestic like product for the year 2011.[9] We have relied upon data Petitioners provided for purposes of measuring industry support.[10]

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because Petitioner accounts for at least 25 percent of the total production of the domestic like product.[11] Based on information provided in the Petition and other submissions, Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because Petitioner accounts for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[12]

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation it is requesting the Department initiate.[13]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; reduced capacity utilization and stunted production and shipments; reduced employment, hours worked, and wages paid; and decline in financial performance.[14] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[15]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of silica bricks from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the Initiation Checklist.[16]

U.S. Price

Petitioner calculated an export price (''EP'') based on price quotes for silica bricks from seven PRC producers of silica bricks.[17] Petitioner substantiated the U.S. price quotes with price quotes received from the Chinese producers and an affidavit explaining that the price quotes were obtained in response to email queries.[18] The terms of sale for these invoices were free on board (''FOB'') China port. Petitioners conservatively made no adjustments to U.S. price.[19]

Normal Value

Petitioner claims the PRC is a non-market economy (''NME'') country and that this designation remains in effect today.[20] The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner contends that Ukraine is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC, (2) it is a significant producer of identical merchandise, and (3) the availability and quality of data are good.[21] Based on the information provided by Petitioner, we believe that it is appropriate to use Ukraine as a surrogate country for initiation purposes.[22] After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and the dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the subject merchandise on its own consumption experience, which Petitioner asserts that, to the best of its knowledge, is similar to the consumption of PRC producers.[23]

Factors of production values were based on reasonably available, public surrogate country data, specifically, Ukraine import data from the Global

[8] *See* Antidumping Duty Investigation Initiation Checklist: Silica Bricks and Shapes from the People's Republic of China (''Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Silica Bricks and Shapes from the People's Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

[9] *See* Petition, at 5 and Exhibits 1 and 9.

[10] *See* Initiation Checklist at Attachment II.

[11] *See* Initiation Checklist at Attachment II.

[12] *Id.*

[13] *Id.*

[14] *See* Petition, at 17–25 and Exhibits 1, 8–9, and 11; *see also* Lost Sales and Revenue Supplement; *see also* First Supplement to the Petition, at questions 5–7.

[15] *See* Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Silica Bricks and Shapes from the People's Republic of China.

[16] *See* Initiation Checklist, at 5–7.

[17] *See* Petition, at 15 and Exhibits 5 and 6.

[18] *See* Petition, at Exhibit 6; *see also* First Supplement to the Petition, at Exhibit 12.

[19] *See* First Supplement to the Petition, at questions 9–10.

[20] *See* Petition, at 14.

[21] *See* Petition, at 14–15.

[22] *See* Initiation Checklist at 6.

[23] *See* Petition, at 16; *see also* First Supplement to the Petition at answers to questions 13–14.

Trade Atlas (''GTA'').[24] In addition, Petitioner made currency conversions, where necessary, based on the POI-average hryvnia/U.S. dollar exchange rate based on Federal Reserve exchange rates.[25] The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner determined energy costs using reasonably available information.[26] Petitioner valued electricity using Ukrainian electricity rate for grade 1 and 2 voltage reported by the National Electricity Regulatory Commission of Ukraine. Petitioner valued natural gas using a price quote in a March 19, 2012 article from UPI.com. Petitioner valued propane using November 15, 2011 prices from Argus International LPG. Petitioner did not inflate the surrogate value for propane because the value only changes periodically and not regularly with inflation.[27] Lastly, Petitioner valued water based on Utilities Ministry of Ukraine data.

Petitioner determined labor consumption, in hours, using its own production experience. Petitioner valued labor using data collected by the International Labor Organization (''ILO'') and disseminated in Chapter 6A of the ILO Yearbook of Labor Statistics.[28] Petitioner adjusted labor costs using consumer price index data published by the International Monetary Fund.

Petitioner determined packing material consumption using reasonably available information. The relevant factors were then valued using data from GTA.[29]

Financial ratios for factory overhead and selling, general and administrative expenses were based on data from the 2011 financial statements of Krasnogorivs'kij Refractory Plant, a Ukrainian producer of refractory bricks.[30]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated dumping margins range from 118.47 percent to 290.12 percent.[31]

Initiation of Antidumping Duty Investigation

Based upon our examination of the Petition on silica bricks from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Application of an Alternative Comparison Methodology

Pursuant to 19 CFR 351.414(c)(1) (2012), in calculating the weighted-average dumping margins in this investigation, the Department will compare weighted-average EPs (or constructed export prices) with weighted-average NVs (the average-to-average method) unless it is determined that another method is appropriate in a particular case. If any interested party wishes to request that the Department consider whether it is appropriate in this investigation to apply an alternative comparison methodology pursuant to 19 CFR 351.414(c)(1) (2012), such requests are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

Petitioner identified 10 PRC producers/exporters of silica bricks. The Department will issue quantity and value questionnaires to each of the 10 producers/exporters of silica bricks named in the Petition, and will make its respondent selection decision based on the responses to the questionnaires it receives. Parties that do not receive a quantity and value questionnaire from the Department may file a quantity and value questionnaire by the applicable deadline if they wish to be included in the pool of companies from which the Department will select mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at (*http://ia.ita.doc.gov/ia-highlights-and-news.html*). In order for the Department to consider a quantity and value questionnaire response, we must receive the response filed electronically using IA ACCESS by no later than 5:00 p.m. on December 26, 2012.[32]

Interested parties must submit applications for disclosure under administrative protective order (''APO'') in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at (*http://ia.ita.doc.gov/apo*).

Separate-Rate Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.[33] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at (*http://ia.ita.doc.gov/ia-highlights-and-news.html*) on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application must be filed electronically with the Department using IA ACCESS by no later than 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the

[24] *See* Initiation Checklist; *see also* Petition, at Exhibit 5; *see also* First and Second Supplements to the Petition, both at Exhibits 5.

[25] *See id.*

[26] *See id.* (for all surrogate values used to value energy inputs).

[27] *See* First Supplement to the Petition at the answers to question 30.

[28] *See* Initiation Checklist; *see also* First Supplement to the Petition at Exhibits 5.

[29] *See* Initiation Checklist; *see also* Petition, at Exhibit 5; *see also* First and Second Supplements to the Petition, both at Exhibits 5.

[30] *See id.*

[31] *See* Initiation Checklist; *see also* Second Supplement to the Petition, at Exhibit 5.

[32] *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[33] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 (''Policy Bulletin''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at (*http://ia.ita.doc.gov/ia-highlights-and-news.html*) on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The relevant Policy Bulletin states:

> While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[34]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. The Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than December 31, 2012, whether there is a reasonable indication that imports of silica bricks from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[35] 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 proceeding initiated on or after March 14, 2011 as supplemented.[36] 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.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 5, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by the scope of this investigation are bricks and shapes, regardless of size, containing at least 90 percent silica (also known as silicon dioxide ($Si0_2$)), regardless of other materials in the bricks and shapes. The products covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 6902.20.1020 and 6902.20.5020. Imports of subject merchandise may also be entered under HTSUS subheading 6901.00.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2012–29976 Filed 12–11–12; 8:45 am]

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[34] *See* Policy Bulletin at 6 (emphasis added).

[35] *See* section 782(b) of the Act.

[36] *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'') as supplemented 76 FR 54697 (September 2, 2011) (this rulemaking modified 19 CFR 351.303(g)(1) and (2)).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC371

Marine Mammals; Issuance of Permits

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and address of recipients.

ADDRESSES: The Letters of Confirmation and related documents are available for review upon written request or by appointment in the following office:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Office of Protected Resources, Permits and Conservation Division, (301)427–8401.

SUPPLEMENTARY INFORMATION: The requested Letters of Confirmation have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for bona fide scientific research that may result only in taking by level B harassment of marine mammals. The following Letters of Confirmation (LOC) were issued in Fiscal Year 2012.

File No. 809–1902: Issued to the Virginia Aquarium & Marine Science Center Foundation, Virginia Beach, VA on February 21, 2007, was extended on March 8, 2012. The purpose of the research is to collect and maintain a long-term record of bottlenose dolphins (*Tursiops truncatus*) in the coastal waters of Virginia and to test the current stock hypothesis for Atlantic coastal dolphins. The expiration date of the LOC was extended from February 28, 2012 to November 30, 2012.

File No. 13427: Issued to Gregory D. Kaufman, Pacific Whale Foundation,

Wailuku, HI on March 26, 2012, authorized an amendment to LOC No. 13427–03 to change the Principal Investigator to Itana Silva. This replaced version 13427–03, issued on July 26, 2011. A subsequent amendment to LOC No. 13427 was issued on July 9, 2012 to change the Principal Investigator to Emmanuelle Martinez. The LOC expires on June 15, 2013.

File No. 17263: Issued to the Alaska SeaLife Center, Seward, AK (Responsible Party: Tara Reimer Jones, Ph.D.), on June 1, 2012, for research on harbor seals (*Phoca vitulina*) in Alaska. Activities include (1) remote video monitoring of seals (installation, removal, repair, and maintenance of remote video cameras that require vessel and helicopter access), (2) aerial surveys and photo-ID of seals on land and ice haulouts, and (3) oceanographic surveys in ice habitats. Surveys may be conducted along the coastline on the southern Kenai Peninsula and western Prince William Sound, Alaska. Other marine mammals that may be harassed during surveys include: Dall's porpoise (*Phocoenoides dalli*); harbor porpoise (*Phocoena phocoena*); killer whale (*Orcinus orca*), excluding the endangered Southern resident distinct population segment; minke whale (*Balaenoptera acutorostrata*); and gray whale (*Eschrichtius robustus*), excluding the endangered Western North Pacific population. The LOC expires on May 31, 2017.

File No. 17245: Issued to John H. Schacke, Ph.D., Georgia Dolphin Ecology Program, Commerce, GA on June 4, 2012, to construct and supplement catalogs of individually identifiable bottlenose dolphins in the southeastern United States; to record behavioral observations of individual animals; and to document how bottlenose dolphins use the estuarine and near-shore waters of the Georgia coast. Research will occur within the coastal waters of Georgia, primarily between St. Catherine's and Altamaha Sounds, including embayments, rivers, and estuaries. Bottlenose dolphins of the Western North Atlantic South Carolina/Georgia Coastal Stock, Northern Georgia/Southern South Carolina Estuarine System Stock, and Southern Georgia Estuarine System Stock will be taken. The LOC expires on June 30, 2017.

File No. 17259: Issued to Paul Webb, Department of Biology, Roger Williams University, Bristol, RI on June 5, 2012, for level B harassment of Western North Atlantic stocks of harbor seals (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), and harp seals (*Pagophilus groenlandica*) resulting from close approach, behavioral observations, and scat collection. The purpose of the research is to examine the demographic structure of the local populations and factors affecting the haul-out behavior of harbor seals at sites in Narragansett Bay. The LOC expires on June 15, 2017.

File No. 17260: Issued to Kayla Causey, Ph.D., California State University, Fullerton, CA, on June 11, 2012, to conduct photo-identification, observations, passive acoustic recordings, underwater videography, and focal follows during vessel surveys of the California coastal stock of bottlenose dolphins within Newport Harbor and the surrounding Orange County coastline of California. The purpose of the research is to (1) develop an activity budget of dolphins in Newport Harbor for comparison to dolphins in surrounding coastal zones; (2) provide a better understanding of the temporal scale of site fidelity in Newport Harbor and the Orange County region for a population of dolphins known to engage in long-shore reversals; (3) gain insight into dolphin social dynamics, structure, information transfer, and cognition using underwater observation; and (4) determine how dolphins respond to vessels and people in the region. Other marine mammals that may be harassed during surveys include: California sea lions (*Zalophus californianus*), harbor seals, common dolphins (*Delphinus delphis* and *D. capensis*), and Risso's dolphins (*Grampus griseus*). The LOC expires on June 15, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 7, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–29971 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC390

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2013 ocean salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2013 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be received by 11:59 p.m. Pacific Time, March 31, 2013.

ADDRESSES: Documents will be available from, and written comments should be sent to, Mr. Dan Wolford, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). Comments can also be submitted via email at *PFMC.comments@noaa.gov.* or through the internet at the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and include the RIN number in the subject line of the message. For specific meeting and hearing locations, see supplementary information.

Council Address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

February 15, 2013: ''Review of 2012 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

March 1, 2013: ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2013 Ocean Salmon Fishery Regulations'' will be mailed to the

public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

March 20, 2013: ''Preseason Report II-Proposed Alternatives and Environmental Assessment Part 2 for 2013 Ocean Salmon Fishery Regulations'' and public hearing schedule will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 22, 2013: ''Preseason Report III-Council-Adopted Management Measures and Environmental Assessment Part 3 for 2013 Ocean Salmon Fishery Regulations'' will be mailed to the public and posted on the Pacific Council Web site at *http://www.pcouncil.org.*

May 1, 2013: Federal regulations for 2013 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 22–25, 2013: The Salmon Technical Team (STT) will meet at the Pacific Council office in a public work session to draft ''Review of 2012 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2013 ocean salmon fisheries.

February 19–22, 2013: The STT will meet at the Pacific Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2013 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2013 ocean salmon fisheries.

March 25–26, 2013: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 25, 2013: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

March 25, 2013: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

March 26, 2013: Red Lion Eureka, Humboldt Bay Room, 1929 Fourth Street, Eureka, CA 95501, telephone 707–445–0844.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at 503–820–2280 (voice), or 503–820–2299 (fax) at least five days prior to the meeting date.

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

Dated: December 6, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–29969 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC136

Marine Mammals; File No. 17152

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to PRBO Conservation Science, 3820 Cypress Drive, #11, Petaluma, CA 94954 (Responsible Party: Russell Bradley) to conduct research on pinnipeds in California.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On August 13, 2012, notice was published in the **Federal Register** (77 FR 48130) that a request for a permit to conduct research on pinnipeds had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit holder is authorized to monitor population trends, health, and ecology of pinnipeds in California over a five-year period. To accomplish this, researchers are authorized to capture, sedate, sample, mark, instrument, photo-identify and incidentally harass harbor seals (*Phoca vitulina richardii*). Ten mortalities of harbor seals over the duration of the permit are authorized. Researchers are authorized to capture, mark, weigh, and sample (swabs and blood) northern elephant seals (*Mirounga angustirostris*); and incidentally harass elephant seals during captures and ground monitoring/photo-identification. Researchers are authorized to harass California sea lions (*Zalophus californianus*) and northern fur seals (*Callorhinus ursinus*) during ground surveys and photo-identification.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 7, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–29935 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC362

Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2012–2013

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, we hereby give notification that the National Marine Fisheries Service has issued an Incidental Harassment Authorization (IHA) to PRBO Conservation Science (PRBO), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California.

DATES: Effective December 7, 2012, through December 6, 2013.

ADDRESSES: To obtain an electronic copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), write to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, telephone the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or download the files at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

Authorization shall be granted for the incidental taking of small numbers of marine mammals if we, NMFS, find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings.

We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Act establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not applicable here, the Marine Mammal Protection Act defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on April 29, 2012, from PRBO requesting the taking by harassment, of small numbers of marine mammals, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. PRBO, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the proposed activities for one year. We determined the application complete and adequate on June 5, 2012 and made the complete application available for public comment (see **ADDRESSES**) for this IHA.

Their proposed research activities would involve monitoring and censusing seabird colonies; observing seabird nesting habitat; restoring nesting burrows; observing breeding elephant seals, and resupplying a field station. The proposed activities would occur in the vicinity of pinniped haul out sites located on Southeast Farallon Island (37° 41′54.32″ N, 123° 0′8.33″ W), Año Nuevo Island (37° 6′29.25″ N, 122° 20′12.20″ W), or within Point Reyes National Seashore (37° 59′38.61″ N, 122° 58′24.90″ W) in central California.

Acoustic and visual stimuli generated by: (1) Noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, may have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals in the proposed areas. These types of disturbances are the principal means of marine mammal taking associated with these activities and PRBO has requested an authorization to take 5,104 California sea lions, 526 harbor seals, 190 northern elephant seals, and 20 Steller sea lions (*Eumetopias jubatus*) by Level B harassment only.

To date, we have issued four 1-year IHAs to PRBO for the conduct of the same activities from 2007 to 2012. This will be PRBO's fifth IHA for the same activities for the 2012 through 2013 season.

Description of the Specified Geographic Region

The proposed action area consists of the following three locations in the northeast Pacific Ocean: the South Farallon Islands, Año Nuevo Island and Point Reyes National Seashore.

Description of the Specified Activity

We outlined the purpose of the research and the specified geographic locations of the activities in a previous notice for the proposed IHA (77 FR 59377, September 27, 2012). The activities to be conducted and their locations have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of PRBO's seabird and pinniped research activities conducted under, the reader should refer to the notice of the proposed IHA (77 FR 59377, September 27, 2012), the application, and associated documents referenced above this section.

Comments and Responses

We published a notice of receipt of PRBO's application and proposed IHA in the **Federal Register** on September 27, 2012 (77 FR 59377). During the 30-day public comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested authorization provided that PRBO carry out the required mitigation measures and monitoring as described in the notice of a proposed IHA (77 FR 59377, September 27, 2012). We have included all measures proposed in the notice of the proposed IHA (77 FR 59377, September 27, 2012) in the Authorization.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the research areas on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population of the Steller sea lion which is listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). California sea lions, northern elephant seals, Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA.

We refer the public to Carretta et al., (2011) for general information on these species. We included a more detailed discussion of the status of these stocks and their occurrence in and around Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in the notice of the proposed IHA (77 FR 59377, September 27, 2012).

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: (1) Motorboat operations; and (2) the appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The effects of the pinniped and seabird research activities would be limited to short-term startle responses and localized behavioral changes and have the potential to temporarily displace the animals from a haul out site. We would expect the pinnipeds to return to a haulout site within 60 minutes of the disturbance (Allen *et al.,* 1985) and do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of pinniped and seabird research operations.

Finally, no research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we would not expect mother and pup separation or crushing of pups to occur.

For a more detailed discussion of behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring, we refer the reader to the notice of the proposed IHA (77 FR 59377, September 27, 2012), the application, and associated documents.

Anticipated Effects on Habitat

We do not anticipate that the research operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the research areas, including the food sources they use (i.e., fish and invertebrates). We do not anticipate that there would be any physical damage to any habitat. While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which we considered in detail in the proposed IHA (77 FR 59377, September 27, 2012), as behavioral modification.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

PRBO has based the mitigation measures described herein, to be implemented for the seabird and pinniped research activities, on the following:

(1) Protocols used during the previous PRBO seabird and pinniped research activities as approved by us;

(2) Recommended best practices in Richardson *et al.* (1995);

(3) The Terms and Conditions of Scientific Research Permit 17152–00 issued on November 30, 2012;

(4) The Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion for these activities.

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, PRBO and/or its designees will implement the following mitigation measures for marine mammals:

(1) Abide by all of the Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion, including: monitoring for offshore predators and reporting on observed behaviors of Steller sea lions in relation to the disturbance.

(2) Abide by the Terms and Conditions of Scientific Research Permit 17152–00 issued on November 30, 2012.

(3) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(4) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed, with the first priority being avoiding the disturbance of Steller sea lions at haul-outs.

(5) Avoid visits to sites used by pinnipeds for pupping.

(6) Monitor for offshore predators and not approach hauled out Steller sea lions or other pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinas orca*) are seen in the area. If predators are seen, eastern U.S. stock Steller sea lions or any other pinniped must not be disturbed until the area is free of predators.

(7) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(8) Conduct seabird observations at North Landing on Southeast Farallon

Island in an observation blind, shielded from the view of hauled out pinnipeds.

(9) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(10) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and to coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(11) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(12) Have the lead biologist serve as an observer to evaluate incidental take.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) the proven or likely efficacy of the specific measure to minimize impacts as planned; and

(3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by us or recommended by the public for previous Authorizations, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

As part of its 2012 application, PRBO proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization.

The PRBO researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

PRBO has complied with the monitoring requirements under the previous authorizations for the 2007 through 2012 seasons. For the 2011–2012 season, the total number of marine mammals incidentally harassed during the conduct of the research were lower than what we authorized in in the 2011 IHA. This along with the results from previous PRBO monitoring reports support our original findings that the mitigation measures set forth in the 2007–2012 Authorizations effected the least practicable adverse impact on the species or stock. We have posted PRBO's 2011–2012 monitoring report at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Reporting

PRBO will submit a final monitoring report to us no later than 90 days after the expiration of the IHA. The final report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The final report will provide:

(i) A summary and table of the dates, times, and weather during all seabird and pinniped research activities.

(ii) Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic or visual stimuli associated with the seabird and pinniped research activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization (if issued), such as an injury (Level A harassment), serious injury, or mortality (e.g., vessel-strike, stampede, etc.), PRBO shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

PRBO shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with PRBO to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act compliance. PRBO may not resume their activities until notified by us via letter, email, or telephone.

In the event that PRBO discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), PRBO will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may

continue while we review the circumstances of the incident. We will work with PRBO to determine whether modifications in the activities are appropriate.

In the event that PRBO discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), PRBO will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. PRBO staff will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate take by Level B harassment only as a result of the pinniped and research operations on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Based on PRBO's previous research experiences, with the same activities conducted in the research areas, we estimate that approximately 5,390 California sea lions, 526 harbor seals, 190 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization. IHA. We base these estimates by multiplying three components: (1) The maximum number of animals that could be present; (2) the maximum number of disturbances; and (3) the estimated number of days that an animal could be present in the proposed area. We derived these estimates from the results of the 2007–2011 monitoring reports, anecdotal information from PRBO scientists, and our statistical analysis of the past three years of data.

For this IHA, we have authorized the take of 5,390 California sea lions, 526 harbor seals, 190 northern elephant seals, and 20 Steller sea lions. Estimates of the numbers of marine mammals that might be affected are based on consideration of the maximum number of marine mammals that could be disturbed by approximately 1,908 visits to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the course of the activity.

There is no evidence that PRBO's planned activities could result in injury, serious injury or mortality within the three areas. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the areas, we expect no injury, serious injury, or mortality to occur, and we do not authorize any takes by injury, serious injury, or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Negligible Impact and Small Numbers Analysis and Determination

We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that four species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent 1.8 percent of the U.S. stock of California sea lion, 0.25 percent of the California breeding stock of the northern elephant seal; 1.97 percent of the California stock of Pacific harbor seal, and 0.04 percent of the Eastern U.S. stock of Steller sea lion. For each species, these numbers are small (each, less than or equal to two percent) relative to the population size.

PRBO's specified activities are not likely to cause long-term behavioral disturbance, abandonment of the haulout areas, serious injury, or mortality because:

(1) The effects of the research activities would be limited to short-term startle responses and localized behavioral changes. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The relatively slow operational speed of the small motor craft during approach to the landing areas;

(3) There is little potential for large-scale movements leading to serious injury or mortality;

(4) The specified activities do not occur near rookeries;

(5) The availability of alternate areas for pinnipeds to avoid the resultant noise and visual stimuli from the seabird and pinniped research activities. Results from previous monitoring reports that support our conclusions that the pinnipeds return to the sites after the disturbance and do not permanently abandon these sites.

We do not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of PRBO's research activities, and none are authorized. These species may exhibit behavioral modifications, including temporarily vacating the area during the seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. However, we anticipate only short-term behavioral disturbance to occur due to the brief duration of the research activities, the availability of alternate areas for marine mammals to avoid the resultant acoustic and visual disturbances; and limited access of PRBO researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect these activities to impact rates of recruitment or survival.

We have determined, provided that PRBO carries out the previously described mitigation and monitoring measures, that the impact of conducting seabird and pinniped research activities on Southeast Farallon Island, Año

Nuevo Island, and Point Reyes National Seashore in central California December 7, 2012, through December 6, 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

Based on the analysis contained here of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the Marine Mammal Protection Act.

Endangered Species Act

The Steller sea lion, eastern U.S. stock is listed as threatened under the ESA and occurs in the research area. NMFS Headquarters' Office of Protected Resources, Permits and Conservation on Division conducted a formal section 7 consultation under the ESA. On November 18, 2008, NMFS issued a Biological Opinion (2008 BiOp); concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions; and issued an incidental take statement (ITS) for Steller sea lions pursuant to section 7 of the ESA. The ITS contains reasonable and prudent measures for implementing terms and conditions to minimize the effects of this take. NMFS has reviewed the 2008 BiOp and determined that there is no new information regarding effects to Steller sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or no new designation of critical habitat that could be affected by the action; and the action will not exceed the extent or amount of incidental take authorized in the 2008 BiOp. Therefore, the IHA does not require the reinitiation of Section 7 consultation under the ESA.

National Environmental Policy Act (NEPA)

To meet our NEPA requirements for the issuance of an Authorization to PRBO, we prepared an Environmental Assessment (EA) in 2007 that was specific to seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore and evaluated the impacts on the human environment of our authorization of Level B harassment resulting from seabird research in Central California. At that time, we determined that conducting the seabird research would not have a significant impact on the quality of the human environment and issued a Finding of No Significant Impact (FONSI) and, therefore, it was not necessary to prepare an environmental impact statement for the issuance of an Authorization to PRBO for this activity. In 2008, we prepared a supplemental EA (SEA) titled ''Supplemental Environmental Assessment for the issuance of an Incidental Harassment Authorization To Take Marine Mammals by Harassment Incidental To Conducting Seabird and Pinniped Research in Central California and Environmental Assessment for the Continuation of Scientific Research on Pinnipeds in California,'' to address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. At that time, we concluded that issuance of an Authorization would not significantly affect the quality of the human environment and issued a FONSI for the 2008 SEA regarding PRBO's activities. In conjunction with this year's application, we have again reviewed the 2007 EA and the 2008 SEA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA. We, therefore, again reaffirm the 2008 FONSI. A copy of the EA, SEA, and the FONSI for this activity is available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, we have issued an IHA to PRBO to take marine mammals, by Level B harassment only, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 7, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–29952 Filed 12–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0068]

Agency Information Collection Activities; Comment Request; Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 11, 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–0068 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: Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection.

OMB Control Number: 1810–0698.

Type of Review: extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 2,076.

Total Estimated Number of Annual Burden Hours: 8,580.

Abstract: The Office of Indian Education Professional Development (OIE PD) Grants program wishes to implement (1) a Semi-Annual Participant Report (SAPR), (2) a Participant Follow-Up Protocol, and (3) an Employment Verification survey. The information collected through the SAPR, the Participant Follow-Up Protocol, and the Employment Verification Form is necessary to (1) assess the performance of the IE PD program on its Government Performance Results Act measures, (2) determine if IE PD participants are fulfilling the terms of their service payback requirements, and (3) provide project-monitoring and compliance information to IE PD Grants program staff.

Dated: December 6, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29923 Filed 12–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0029]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Annual Fire Safety Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 11, 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–0029 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 2E105, 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: Student Assistance General Provisions—Annual Fire Safety Report.

OMB Control Number: 1845–0097.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Private Sector; State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 7,298.

Total Estimated Number of Annual Burden Hours: 7,299 .

Abstract: As provided by the Higher Education Opportunity Act (HEOA), the regulations implement changes requiring institutions to collect statistics on fires in on-campus student housing facilities, including the number and cause of each fire, the number and injuries related to each fire that required treatment at a medical facility, the number of deaths related to each fire, and the value of property damage caused by each fire. Institutions must also publish an annual fire safety report containing the institution's policies regarding fire safety and the fire statistics information. Further the HEOA requires institutions to maintain a fire log that records the date, time, nature, and general location of each fire in on-campus student housing facilities.

Dated: December 6, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29921 Filed 12–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0063]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Mandatory Collection of Elementary and Secondary Education Data for EDFacts

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 11, 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–0063 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: Annual Mandatory Collection of Elementary and Secondary Education Data for EDFacts.

OMB Control Number: 1875–0240.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 55.

Total Estimated Number of Annual Burden Hours: 116,325.

Abstract: The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education (ED). EDFacts, an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all K–12 educational programs, has transformed the way in which ED collects and uses data. EDFacts provides an electronic submission system for state education agencies (SEAs), and centralizes within ED the availability of the performance data supplied by SEAs to enable better analysis and use in policy development, planning, and management. ED is currently in the process of collecting data for the 2010–11, 2011–12, and 2012–13 school years as approved by OMB (1875–0240). ED seeks another three-year approval for this collection. The proposed collection includes the 2013–14, 2014–15, and 2015–16 school years. (As part of this approval, it should be understood that ED is authorized to collect the data about these school years over whatever time is required to secure complete and accurate data from each state education agency.) ED seeks OMB approval under the Paperwork Reduction Act to collect the elementary and secondary education data from state education agencies as described in the five sections of Attachment B that document all of the data groups. ED encourages the public to review, at a minimum, Attachment C, which outlines the changes between what is currently collected and what is newly proposed for collection. To the extent that any of these proposed new data groups are not available as of the 2013–14 school year, ED seeks to know from the SEA data providers if those data will be available in future years. If information for a data group is not currently available, please provide information beyond the fact that it is not available. Are there specific impediments to providing this data that you can describe? Is the definition for the data group unclear or ambiguous? Do the requested permitted values align with the way your state collects the data? This is very important information because the collection of these data is mandatory. ED also seeks to know if the SEA data definitions are consistent and compatible with the EDFacts definitions and accurately reflect the way data is stored and used for education by state education agencies. The answers to these questions by the data providers will influence the timing and content of the final EDFacts proposal for the collection of these data.

Dated: December 6, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services,Office of Management.

[FR Doc. 2012–29924 Filed 12–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–OSERS–0031]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Title I State Plan for Vocational Rehabilitation Services and Title VI–Part B Supplement for Supported Employment Services

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 11, 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–OSERS–0031or 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: Title I State Plan for Vocational Rehabilitation Services and Title VI–Part B Supplement for Supported Employment Services.

OMB Control Number: 1820–0500.

Type of Review: Extension without change of an existing collection of information,

Respondents/Affected Public: State, Local, or Tribal Governments,

Total Estimated Number of Annual Responses: 80,

Total Estimated Number of Annual Burden Hours: 1,002,000,

Abstract: The Rehabilitation Act of 1973, as amended, requires each state to submit to the Commissioner of the Rehabilitation Services Administration (RSA) a State Plan for the Vocational Rehabilitation (VR) Services program, and the State Supported Employment (SE) Services program, that meets requirements of Sections 101(a) and 625 of the Act. Program funding is contingent on Departmental approval of the State Plan and its supplement.

Dated: December 6, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29922 Filed 12–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability for the Draft Programmatic Environmental Assessment for the Recycling of Scrap Metals Originating From Radiological Areas

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability for public review and comment of the *Draft Programmatic Environmental Assessment (PEA) for the Recycling of Scrap Metals Originating from Radiological Areas*. On September 28, 2011, the Secretary of Energy approved a recommendation, contingent on the completion of the appropriate National Environmental Policy Act (NEPA) review, to delegate authority to manage radiological clearance and release of scrap metal from radiological areas to each Under Secretary for sites under his or her cognizance, in accordance with the processes contained in DOE Order 458.1 (which replaces the order previously governing release procedures). This Draft PEA for the Recycling of Scrap Metals Originating from Radiological Areas analyzes the potential environmental impacts associated with resuming the clearance of scrap metal, originating from DOE radiological areas, for recycling pursuant to improved procedures designed to assure that clearance for release is limited to metals meeting stringent criteria. This Draft PEA also analyzes the reasonable alternatives to this proposal. Metals with volumetric radiological contamination, and scrap metals resulting from Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), are not included in the scope of this PEA.

DATES: DOE invites Federal agencies, state and local governments, Native American tribes, industry, other interested organizations, and members of the public to submit comments on the Draft PEA during the public comment period which starts with the publication of the Notice of Availability in the **Federal Register** and extends for 30 days until January 11, 2013. DOE will consider comments received after this date to the extent practicable.

ADDRESSES: The Draft PEA for the Recycle of Scrap Metal Originating from Radiological Areas is available for review on the DOE NEPA Web site at: *http://www.energy.gov/nepa* and on the National Nuclear Security Administration (NNSA) NEPA Web site at: *http://nnsa.energy.gov/nepa*. Comments on the Draft PEA for the Recycle of Scrap Metal Originating from Radiological Areas may be submitted electronically via email to *Scrap_PEA comments@hq.doe.gov*. Alternatively, written comments may be sent by postal mail to: Dr. Jane Summerson, DOE NNSA, P.O. Box 5400, Bldg 401, K.AFB East, Albuquerque, NM 87185.

For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600, or leave a message at 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many of DOE's NEPA documents are available on the Internet through the DOE NEPA Web site at *http://www.energy.gov/nepa*.

SUPPLEMENTARY INFORMATION: DOE has prepared the Draft PEA for Recycling of Scrap Metals Originating from Radiological Areas in accordance with Council on Environmental Quality regulations (40 CFR Parts 1500—1508) that implement NEPA and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

Background: On July 13, 2000, the Secretary of Energy imposed an agency-wide suspension on the unrestricted release of scrap metal originating from radiological areas at DOE facilities for the purpose of recycling. The suspension was imposed in response to public concerns about the potential effects of radioactivity in or on metal recycled from the Department's facilities. Other materials continued to be controlled and cleared for release under the requirements of DOE Order 5400.5, *Radiation Protection of the Public and the Environment*. Initially, the suspension was to remain in effect until December 31, 2000, while the Department developed and implemented improvements, revised its directives and associated guidance documents applicable to scrap metal releases, and engaged the public in a dialogue regarding DOE radiological release practices through the NEPA process. In 2001, DOE announced its

intention to prepare a Programmatic Environmental Impact Statement (PEIS) on the policy alternatives for disposition of metals from its sites. Although the suspension was considered to be a temporary measure, it has been in force since 2000, and the PEIS was not completed. From 2008 through 2010, the Department, through an effort lead by the NNSA and supported by the Offices of Health, Safety and Security; Science; and Environmental Management, reviewed numerous DOE programs across the complex that involved improved monitoring and proposed release practices to determine how these practices could be implemented. In April 2010, NNSA hosted an inter-site workshop that developed a DOE wide consensus regarding how sites would implement these practices. In February 2011, in part to implement the improved monitoring and release practices recommended in 2001, DOE replaced DOE Order 5400.5 with DOE Order 458.1, *Radiation Protection of the Public and the Environment,* which incorporated an improved scrap metals clearance process. Consequently, DOE has determined that a Programmatic Environmental Assessment (PEA) is appropriate to consider the alternatives for the disposition of uncontaminated scrap metal originating from these areas.

Purpose and Need for Agency Action: The purpose and need for agency action is to allow DOE to better manage materials no longer needed by the Department and to allow for the recycle, where appropriate, of materials originating from DOE radiological areas. These scrap metals have, and continue to be, accumulated at DOE sites since the 2000 Department-wide suspension on any unrestricted release for recycle of scrap metals originating from radiological areas at DOE facilities (DOE 2000). The proposed action is consistent with the principles of sustainable materials management as presented in Executive Order (E.O.) 13423, Strengthening Federal Environmental, Energy, and Transportation Management (January 27, 2007) and E.O. 13514, Federal Leadership in Environmental Energy, and Economic Performance (October 5, 2009).

Alternatives Analyzed: This PEA analyzes the potential human health and environmental impacts associated with the proposed action, a disposal alternative, and a no-action (continued storage) alternative.

Potential Outcome: The proposed action would allow DOE to modify its policy to allow the delegation of authority from the Secretary to the Under Secretaries to manage the radiological clearance process for uncontaminated scrap metals originating in DOE radiological areas for sites demonstrated to have robust monitoring and release practices in place. Scrap metal that meets these robust practices for unrestricted release would be candidates for recycle. Scrap metal that does not meet these requirements would be identified as contaminated and maintained by DOE or disposed of as waste in an appropriate manner. This PEA also evaluates potential human health and environmental impacts associated with a disposal alternative, and a no-action (continued storage) alternative.

Metal with volumetric radiological contamination, and scrap metal resulting from RCRA and CERCLA clean-up activities, are not included in the scope of the PEA. Impacts associated with scrap metal releases from any such clean-up activities would be evaluated separately under NEPA as appropriate. In addition, sites under the Office of Legacy Management are not included since these facilities do not generate potentially radiologically contaminated scrap metal that would be recycled.

Following the end of the public comment period, DOE will consider all comments received while completing the PEA, and as appropriate, issue a Finding of No Significant Impact (FONSI) or prepare a PEIS prior to deciding whether to implement a revision to the policy for clearance and release of scrap metal from radiological areas.

Issued in Washington, DC, on December 6, 2012.

Thomas P. D'Agostino,

Under Secretary for Nuclear Security and Administrator, National Nuclear Security Administration.

[FR Doc. 2012–30028 Filed 12–11–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP98–25–000.
Applicants: West Texas Gas, Inc.
Description: Monthly Spot Index Price of WEST TEXAS GAS INC.
Filed Date: 12/4/12.
Accession Number: 20121204–5137.
Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–369–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Tariff Revisions—General Terms and Conditions to be effective 1/4/2013.
Filed Date: 12/4/12.
Accession Number: 20121204–5074.
Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–370–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/04/12 HUB Negotiated Rate Blanket Filing—ConocoPhillips to be effective 12/4/2012.
Filed Date: 12/4/12.
Accession Number: 20121204–5099.
Comments Due: 5 p.m. ET 12/17/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–1075–001.
Applicants: Arlington Storage Company, LLC.
Description: Arlington Storage Company, LLC—Compliance with Order Accepting 587–V Filing to be effective 12/1/2012.
Filed Date: 12/4/12.
Accession Number: 20121204–5075.
Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP12–1080–002.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company submits tariff filing per 154.203: Steuben Gas Storage Co.—Compliance with Order Accepting Order No. 587–V Filing to be effective 12/1/2012.
Filed Date: 12/4/12.
Accession Number: 20121204–5100.
Comments Due: 5 p.m. ET 12/17/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–29912 Filed 12–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–371–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Amendment to Neg Rate Agmt (Enterprise 12–10) filing to be effective 12/6/2012.
Filed Date: 12/5/12.
Accession Number: 20121205–5111.
Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–372–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Amendment to Neg Rate Agmt (JP Morgan 156–4) filing to be effective 12/5/2012.
Filed Date: 12/5/12.
Accession Number: 20121205–5112.
Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–373–000.
Applicants: Cimarron River Pipeline, LLC.
Description: NAESB Version 2.0 Extension of Time filing to be effective 12/1/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5000.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP13–374–000.
Applicants: Dauphin Island Gathering Partners.
Description: NAESB Version 2.0 Extension of Time to be effective 12/1/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5001.
Comments Due: 5 p.m. ET 12/18/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1631–001.

Applicants: Energy West Development, Inc.

Description: 12052012 Compliance Filing to be effective 12/1/2012.

Filed Date: 12/5/12.

Accession Number: 20121205–5141.

Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–86–001.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: NAESB 2.0 Compliance Filing to be effective 12/1/2012.

Filed Date: 12/5/12.

Accession Number: 20121205–5063.

Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–93–001.

Applicants: Freebird Gas Storage, L.L.C.

Description: Freebird Compliance Re-Filing, Docket No. RP13–93–000 to be effective 12/1/2012.

Filed Date: 12/5/12.

Accession Number: 20121205–5168.

Comments Due: 5 p.m. ET 12/17/12.

Docket Numbers: RP13–99–002.

Applicants: Empire Pipeline, Inc.

Description: Empire NAESB v2 CF 2 to be effective 12/1/2012.

Filed Date: 12/5/12.

Accession Number: 20121205–5156.

Comments Due: 5 p.m. ET 12/17/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 6, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2012–29945 Filed 12–11–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9525–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1613.04; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs (Renewal); 40 CFR part 51 subpart S; was approved on 11/02/2012; OMB Number 2060–0252; expires on 11/30/2015; Approved without change.

EPA ICR Number 1292.09; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (Renewal); was approved on 11/05/2012; OMB Number 2060–0135; expires on 11/30/2015; Approved without change.

EPA ICR Number 0575.13; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies; 40 CFR part 716; was approved on 11/21/2012; OMB Number 2070–0004; expires on 11/30/2015; Approved with change.

Short Term Extension of Expiration Date

EPA ICR Number 2288.05; Pesticides Data Call In Program; a short term extension of the expiration date was granted by OMB on 11/21/2012; OMB

Number 2070–0174; expires on 12/31/2012.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–29946 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2012–0547, FRL–9525–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulations.gov Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2012–0547 to (1) EPA online using *www.regulations.gov* (our preferred method), by email *crowe.bryant@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, mail code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, OEI/OIC/CStD at the Environmental Protection Agency, 1200 Pennsylvania Ave. NW., (MC 2822–T), Washington, DC 20460; telephone number (202) 566–0295; fax number (202) 566–1611: email address: *crowe.bryant@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 18, 2012 (77 FR 42305), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2012–0547, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Regulations.gov Information Collection.

ICR numbers: EPA ICR No. 2357.04, OMB Control No. 2025–0008 .

ICR Status: This ICR is scheduled to expire on December 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In response to the Presidential memorandum, the eRulemaking Program launched the *Regulations.gov* 'feedback exchange' Web site in May 2009. This interactive Web site showcases new technologies being considered for the Regulations.gov 'feedback exchange' and Regulations.gov, as well as other agency-specific initiatives and rulemaking activities. The 'feedback exchange' serves as a learning laboratory for open government, enabling the public to provide input on the *Regulations.gov* interface, build a community of practice on the Federal regulatory development process, and ensure that the eRulemaking Program can efficiently manage federal resources by testing new tools before they are launched.

New technologies considered for *Regulations.gov* and the *Regulations.gov* 'feedback exchange' include: User Profiles; Comment Threads and Wikis; Ratings, Polls, and Tagging; an interactive Educational Tool; and Information Export and Sharing capabilities, such as application programming interfaces (or APIs). These technologies have been deployed iteratively, with components deployed upon the site's release in May 2009, and others deployed during updates throughout the last three years. Other components are still being considered and will be released during subsequent upgrades to the *Regulations.gov* 'feedback exchange' and *Regulations.gov.* User profiles enable the public to register on the site and pre-load submitter information for later use as well as save their own personalized searches, RSS feeds, and email alerts without the use of persistent cookies. Comment Threads allow the public to enter into virtual conversations with one another about a topic. Wikis enable the public to collaboratively develop and modify narrative descriptions about a topic. Ratings and Polls allow the public to indicate a preference for a topic or issue via the selection of stars or thumbs up/thumbs down icons which graphically provide an at-a-glance indication of public sentiment and can simplify navigation. Tagging provides the public with the ability to tag or label information they or someone else has posted to the site to ease navigation and to promote the formation of common interest categories. The Educational Tool will inform the public about the Federal rulemaking process through interactive text and images. The Data Export capability enables the public to download and review the contents of a rulemaking docket as well

as mix and match such information with other information in a new way (also known as a ''mash-up''). The *Regulations.gov* 'feedback exchange' will rely on voluntary feedback from Government, Industry, Academia and Citizenry to improve *Regulations.gov* as time goes on.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 451 hours per year. 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.

Respondents/Affected Entities: Anyone who chooses to visit *Regulations.gov*.

Estimated Number of Respondents: 13,000.

Estimated Number of Potential Responses: 91,000.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 451 hours.

Estimated Capital or Operations & Maintenance Annual Costs: $0.

Changes in the Estimates: There is a decrease of 4 burden hours from 455 to 451 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens due to a minor mathematical adjustment.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–29949 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0533; FRL–9525–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Phosphate Fertilizer Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0533, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 *FR* 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0533, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Phosphate Fertilizer Industry (Renewal).

ICR Numbers: EPA ICR Number 1061.12, OMB Control Number 2060–0037.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subparts T, U, V, W and X. Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 53 hours per response. ''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.

Respondents/Affected Entities: Phosphate fertilizer plants.

Estimated Number of Respondents: 13.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,373.

Estimated Total Annual Cost: $453,090, which includes $132,900 in labor costs, no capital/startup costs, and $320,190 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to an adjustment of respondent and Agency labor hours. The previous ICR assumed that burden hours accounted for all technical, managerial, and clerical hours. To be consistent with the estimation methodology used in other ICRs, this ICR assumes that labor hours account for technical hours only. Clerical and managerial hours require additional time, and equal 10 and 5 percent of technical hours, respectively. Additionally, this ICR uses updated labor rates, resulting in an increase to the total burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–29947 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0535; FRL–9524–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Lead Smelters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0535, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 9, 2012 (77 *FR* 47631), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0535, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Secondary Lead Smelters (Renewal).

ICR Numbers: EPA ICR Number 1128.10, OMB Control Number 2060–0080.

ICR Status: This ICR is scheduled to expire on January 31, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart L.

Owners or operators of the affected facilities must make an initial notification report, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. ''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.

Respondents/Affected Entities: Secondary lead smelting facilities.

Estimated Number of Respondents: 25.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 37.

Estimated Total Annual Cost: $3,631, which includes $3,631 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment decrease of one burden hour for the respondents due to differences in mathematical rounding. Additionally, there is an increase in burden costs from the most recently approved ICR is due to an adjustment in the labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–29948 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0578; FRL9761–3]

Proposed Information Collection Request; Comment Request; Technical Assistance Needs Assessments (TANAs) at Superfund Remedial or Removal Sites (NEW)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Technical Assistance Needs Assessments (TANAs) at Superfund Remedial or Removal Sites'' (EPA ICR No. 2470.01, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 11, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0578 online using *www.regulations.gov* (our preferred method), by email to *knudsen.laura@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Laura Knudsen, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, Mail Code 5204P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–603–8861; fax number: 703–603–9102; email address: *knudsen.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers the usage of TANAs with members of the impacted community in order to determine how the community is receiving technical information about a Superfund remedial or removal site; whether the community needs additional assistance in order to understand and respond to site-related technical information; and whether there are organizations in the community that are interested or involved in site-related issues and capable of acting as an appropriate conduit for technical assistance services to the affected community. Given the specific nature of the TANA, 8 to 10 persons will be interviewed per site, with an estimated total of 250 persons being interviewed per year (25 sites). Responses to the collection of information are voluntary and the names of respondents will be protected by the Privacy Act. The TANA will help ensure the community's needs for technical assistance are defined as early in the remedial/removal process as possible and enable meaningful community involvement in the Superfund decision-making process. Additionally, the TANA process produces a blueprint for designing a coordinated effort to meet the community's needs for additional technical assistance while minimizing the overlap of services provided.

Form Numbers: None.

Respondents/affected entities: Respondents to this ICR are local/state government officials, potentially-responsible party (PRP) representatives, and individual community members who may be impacted by a Superfund site or a removal action lasting 120 days or longer. These community members voluntarily participate in community involvement activities throughout the remedial phase of the Superfund process. SIC Codes are OSHA's Standard Industrial Classification System used to identify different groups. Local/state governments are categorized as Division J: Public Administration, Major Group 95: Administration of Environmental Quality, subgroup 9511: Air and Water Resource and Solid Waste Management. The other respondents, community members, do not have a SIC Code as they do not constitute an industry.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 250 (per year).

Frequency of response: Once during the remediation of the Site. Each TANA

interview is expected to last approximately one hour in duration.

Total estimated burden: 250 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $4,900 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: Not applicable. This is a new information collection.

Dated: November 26, 2012.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2012–29981 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0539; FRL–9362–3]

Pesticides; Draft Guidance for Pesticide Registrants on Antimicrobial Pesticide Products With Mold-Related Label Claims; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) titled ''Guidance on Antimicrobial Pesticide Products with Mold-Related Label Claims.'' PR Notices are issued by EPA's Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration-related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice, once final, will provide guidance to the registrant concerning product performance (efficacy) data and labeling for ''mold-related'' pesticide products. EPA believes that the label improvements described in this draft document, once final, will provide consumers better product information with which to make an informed choice in selecting mold-related products that best suit their needs and thereby help improve protection of public health.

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0539, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

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

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5448; fax number: (703) 308–6467; email address: *kempter.carlton@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 required to submit data under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or are required to register pesticides. 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:

- Producers of pesticide products (NAICS 32532).
- Producers of antimicrobial pesticides (NAICS 32561).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How can I get copies of this document and other related information?

A copy of the draft PR notice is available in the docket, identified by docket identification (ID) number EPA–HQ–OPP–2010–0539.

II. What guidance does this PR notice provide?

This draft PR Notice, once final, will provide guidance to the registrant concerning product performance (efficacy) data and labeling for ''mold-related'' pesticide products. Mold-related pesticides are antimicrobial pesticides that bear a label claim to inhibit or destroy mold or mildew growth on hard, nonporous and porous surfaces in indoor environments (hereinafter referred to as ''mold-related pesticides''). ''Fungicides'' are antimicrobial pesticides that destroy fungi (including yeasts) and fungal spores pathogenic to humans. ''Fungistats'' are antimicrobial pesticides intended for aesthetic or cosmetic purposes and only inhibit fungal growth.

This guidance, once final, will explain when the Agency expects to require applicants or registrants to submit efficacy data in support of the registration of mold-related pesticides. In accordance with 40 CFR part 161,

EPA pursuant to FIFRA requires the submission of efficacy data for fungicides. EPA also requires the submission of efficacy data when any specific species of fungus is listed on the label of fungicides, or when ''residual'' or ''prevention'' claims are made for fungicides. For fungistats, registrants must conduct efficacy studies but are not required under 40 CFR part 161 to submit them to EPA except upon request.

This guidance, once final, will also describe appropriate label language for fungicides and fungistats, and for products used for mold remediation, on nonporous and porous surfaces, for residual activity, for mold prevention, and in heating, ventilation, air conditioning and refrigeration systems. All of these recommended label changes are designed to improve protection of public health through proper use of mold-related pesticides.

III. Do PR notices contain binding requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decisionmakers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

Authority: Sections 2 through 34 of FIFRA (7 U.S.C. 136–136y).

List of Subjects

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

Dated: November 29, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012–30023 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2012–0892; FRL–9761–4]

Human Studies Review Board; Notification of a Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of the Science Advisor announces a public meeting of the Human Studies Review Board to advise the Agency on the EPA scientific and ethical reviews of research with human subjects.

DATES: This public meeting will be held on January 17, 2013, from approximately 1:00 p.m. to approximately 4:30 p.m. Eastern Time. Comments may be submitted on or before noon (Eastern Time) on Thursday, January 10, 2013.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2012–0892, by one of the following methods:

Internet: http://www.regulations.gov: Follow the online instructions for submitting comments.

Email: ORD.Docket@epa.gov.

Mail: The EPA Docket Center EPA/DC, ORD Docket, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site *http://www.epa.gov/epahome/dockets.htm.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0892. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://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 the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any electronic storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact Jim Downing at telephone number (202) 564–2468; fax: (202) 564–2070; email address: *downing.jim@epa.gov* or Lu-Ann Kleibacker on telephone number (202) 564–7189; fax (202) 564–2070; email address *kleibacker.lu-ann@epa.gov;* mailing address Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

SUPPLEMENTARY INFORMATION:

Location: The meeting will be held at the EPA Conference Center—Lobby Level, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT,** so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting'' under subsection D. ''How May I Participate in this Meeting?'' of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This Notice may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act

or the Federal Insecticide, Fungicide, and Rodenticide Act. This notice might also be of special interest to participants of studies involving human subjects, or representatives of study participants or experts on community engagement. Since many entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*). The Agency's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by the last week of December 2012. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

C. What should I consider as I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data that you used to support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. To ensure proper receipt by the EPA, be sure to identify the Docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by the EPA, it is imperative that you identify Docket ID number EPA–HQ–ORD–2012–0892 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to Thursday, January 10, 2013. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing or Lu-Ann Kleibacker, under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Thursday, January 10, 2013, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meeting. For the Board to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the HSRB members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the agency strongly encourages you to submit such comments no later than noon, Eastern Time, Thursday, January 10, 2013. You should submit your comments using the instructions in Section I., under subsection C., ''What Should I Consider as I Prepare My Comments for the EPA?'' In addition, the agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 § 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the Agency's Science Advisor.

1. *Topic for discussion.* At its meeting on January 17, 2013, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding this topic:

a. A completed study report from the Antimicrobial Exposure Assessment Task Force II (AEATF) in which the dermal and inhalation exposure of professional janitorial workers was

monitored as they poured liquid antimicrobial pesticide products from conventional or reduced-splash containers into different sizes and types of source containers. EPA seeks the advice of the HSRB on the scientific soundness of this completed research and on its appropriateness for use in estimating exposure that results from pouring liquid antimicrobial pesticide products. EPA also seeks the advice of the HSRB on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR Part 26.

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information regarding the Board's final meeting report, will be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: December 3, 2012.

Glenn Paulson,

Science Advisor.

[FR Doc. 2012–29983 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–SFUND–2012–0897; FRL–9761–9]

Proposed Administrative Cost Recovery Settlement Under the Comprehensive Environmental Response Compensation and Liability Act, as Amended, Radiation—Former Air Capitol Dial Superfund Site, Sedgwick County, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement with Air Capitol Dial, Inc., for recovery of past response costs concerning the Radiation—Former Air Capitol Dial Superfund Site (the ''Site'') in Sedgwick County, Kansas. The settlement requires Air Capitol Dial, Inc. to pay $225,000 plus interest over a three year period of time, to the Hazardous Substance Superfund. Total past costs for the Site are approximately $600,000. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 office located at 11201 Renner Boulevard, Lenexa, Kansas.

DATES: Comments must be submitted on or before January 11, 2013.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas, Monday through Friday, between the hours of 7:00 a.m. through 5:00 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 11201 Renner Boulevard, Lenexa, Kansas, (913) 551–7567. Requests should reference the Radiation—Former Air Capitol Dial Superfund Site, EPA Docket No. CERCLA–07–2011–0005. Comments should be addressed to: Denise L. Roberts, Senior Assistant Regional Counsel, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, at telephone: (913) 551–7559; fax number: (913) 551–7925/ Attn: Denise L. Roberts; Email address: *roberts.denise@epa.gov.*

Dated: November 28, 2012.

Cecilia Tapia,

Director, Superfund Division, Region 7.

[FR Doc. 2012–29975 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0902; FRL–9371–9]

Polychlorinated Biphenyls (PCBs); Recycling Plastics From Shredder Residue

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: EPA is seeking comment on an interpretation of its regulations currently under consideration that would generally allow for the recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue, relying principally on the regulatory provisions for excluded PCB products. The interpretation described in this notice responds to questions EPA has received about the applicability of the excluded PCB products regulations.

DATES: Comments must be received on or before January 11, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0902, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2012–0902. 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–2012–0902. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket 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:

Peter Gimlin, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; email address: *gimlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice is directed to the public in general, and may be of interest to a wide range of stakeholders, including private citizens, federal, tribal, state and local governments, environmental consulting firms, industry representatives, environmental organizations and other public interest groups. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may have interest in this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

EPA is considering an interpretation of its regulations that would generally allow for recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1), relying principally on the regulatory provision for excluded PCB products at 40 CFR part 761. In the interest of transparency, EPA is inviting the public to provide comments as part of this process. EPA has opened the docket for public comment for 30 days after publication in the **Federal Register**. Details on how to provide comments to the docket are provided under **ADDRESSES**.

II. Background

EPA was approached by the Institute of Scrap Recycling Industries, Inc. (ISRI), regarding separation, recycling, use, and distribution of recycled plastics from shredder residue recovered from metals recycling facilities (referred to by ISRI as automobile shredder residue (ASR) aggregate). In a February 24, 2011 letter, ISRI requested ''written confirmation that separating plastics from ASR aggregate for use and distribution in commerce, using processes that reduce any PCBs that may be present to a level at or below which there is no unreasonable risk, is authorized'' under regulations promulgated pursuant to the Toxic Substances Control Act (TSCA) (see 16 U.S.C. 2605(e)) (Ref. 2). ISRI stated that:

> * * * analysis shows that the separation, recycling, distribution in commerce, and reuse of plastics from shredder aggregate is consistent with existing authorizations that allow the use and distribution in commerce of products that contain low levels of PCBs, including provisions for ''excluded PCB products'' and ''excluded PCB manufacturing processes'' (as defined in 40 C.F.R. § 761.3).

ISRI also stated that resolving regulatory uncertainty could lead to investments and further development in innovative methods to separate plastics from ASR aggregate that would produce broad environmental benefits and increase global competitiveness (Ref. 2).

ISRI developed a set of voluntary procedures designed to prevent the introduction of PCBs that are regulated for disposal into recycled plastics recovered from shredder residue generated by metal recycling facilities. The Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1) includes development and implementation of a documented materials management system through: (1) Documented source control programs aimed at preventing the introduction of PCBs regulated for disposal into the shredder feedstock materials that contribute to any shredder residue from which plastics will be recovered for recycling; and (2) documented output control programs for facilities processing/producing/recycling plastics from shredder residue. The Voluntary Procedures for Recycling Plastics from Shredder Residue and supporting materials are available at EPA–HQ–OPPT–2012–0902.

According to ISRI, 1 to 2 million tons of plastic are generated annually in ASR aggregate, most of which could be separated and recycled rather than disposed using novel technologies (Ref. 3). ISRI further delineates that the most common automotive plastic categories are polypropylene (PP), polyethylene (PE), polyurethane (PU), and polyvinyl chloride (PVC). ISRI also mentions acrylonitrile styrene butadiene (ABS) and high-impact polystyrene (HIPS) as additional types of automotive plastics found in ASR. By assuming that the 1 to 2 million tons of plastic generated from ASR annually, when characterized by the percentage of total scrap plastics from a typical 2001 vehicle (Ref. 4), this would imply the following total annual volumes: PP (22.1%): 221,000–442,000 tons; PU (19.3%): 193,000–386,000 tons; nylon (12.4%): 124,000–248,000 tons; PVC (7.9%): 79,000–158,000 tons; ABS (7.4%): 74,000–148,000 tons; PE (4.4%): 44,000–88,000 tons; polycarbonate (3.9%): 39,000–78,000 tons; other engineering resins, including HIPS (10.9%): 109,000–218,000 tons; polyvinyl butyral (2.1%): 21,000–41,000 tons; other (9.8%): 98,000–196,000 tons. However, ISRI notes that not all of these plastics are currently technically or economically feasible for recovery. But, ISRI highlights several plastics as likely candidates for recycling. These are PP, high-density PE, ABS, HIPS, and PU foam. Recovery of these plastics would require installation and operation of new or modified material separation equipment.

To characterize the potential benefits of recovering and recycling plastics in ASR aggregate, ISRI commissioned a report from Nathan Associates, Inc. (Ref. 5). This report estimates economic benefits and environmental improvements from separating, sorting, processing, and recycling plastics found in ASR aggregate rather than disposing this material. In brief, the report finds that allowing plastics in ASR aggregate to be recycled would create demand for new capital equipment to be manufactured, installed, and operated in material separation facilities. This would lead to increased economic

activity both directly through purchase, installation, and operation of this equipment, as well as indirectly through increased demand for intermediate goods and services. The report also estimates positive environmental impacts on energy consumption, greenhouse gases, water use, and landfill space if virgin plastics were replaced with recycled material.

EPA believes that recycling turns materials that would otherwise become waste into valuable resources. Recycling includes collecting recyclable materials that would otherwise be considered waste, sorting and processing recyclables into raw materials such as fibers, manufacturing raw materials into new products, and purchasing recycled products. Collecting and processing secondary materials, manufacturing recycled-content products, and then buying recycled products creates a circle or loop that ensures the overall success and value of recycling. Ultimately, recycling can generate a host of financial, environmental, and social returns. Some of these benefits accrue locally as well as globally. Examples of the general benefits of recycling include protecting and expanding U.S. manufacturing jobs and increasing U.S. competitiveness; reducing the need for landfilling and incineration; preventing pollution caused by the manufacturing of products from virgin materials; saving energy; decreasing emissions of greenhouse gases that contribute to global climate change; conserving natural resources such as timber, water, and minerals; and helping sustain the environment for future generations.

With respect to recycling by the automotive industry overall, research on improvements in automotive design and construction has been conducted in order to facilitate the recycling of automotive materials/components. The recycling of automotive steel has proven to be economically advantageous, so that wholesale automotive recycling is now widespread. Since a large volume of wastage is also generated, industry is interested in reusing as much automotive plastic as may be environmentally and economically feasible (Ref. 6).

Increases in the recycling of plastics from ASR aggregate may also offer some benefits beyond that of other forms of plastics recycling. For instance, because substantial automotive recycling systems are already in place for the primary purpose of recovering steel, large quantities of ASR aggregate are already being simultaneously collected. Such available quantities of ASR aggregate may then be further separated and processed as necessary for purposes of reuse. Also, any potential expansion of ASR aggregate recycling capabilities could potentially generate excess capacity and/or technological advancements for use in the recycling of non-automotive products of a similar nature, such as large appliances for example.

Such dynamics demonstrate the potential for creating a broad range of direct and indirect benefits that may be directly attributed to improved procedures and reduced regulatory barriers associated with the recycling of plastics in ASR aggregate. Any stimulation of the market for ASR aggregate may thereby help to not only protect and expand U.S. manufacturing jobs, but also foster new technologies and products while increasing U.S. competitiveness.

While EPA agrees that recycling plastics from ASR aggregate could have net economic benefits and positive environmental impacts, EPA has not conducted an independent estimate of the precise magnitude or timing of these benefits and impacts. Therefore, EPA is not in a position to assess the underlying assumptions, or the savings per ton and multipliers, used in the benefit estimates from the Nathan Associates, Inc. report commissioned by ISRI. EPA notes that the report does not address the extent to which economic activity associated with the recycling of plastics from ASR aggregate would displace current economic activity associated with disposal of these plastics or the manufacturing of virgin materials. Nor does it address the timing of potential investments in new equipment. Additionally, the report relies on assumptions supported by limited data on plastic volumes, recoverability, environmental impacts, and market prices. EPA is interested in the public views on factors that may affect the direction, magnitude, and timing of benefits, costs, and environmental impacts associated with recycling plastics found in ASR aggregate rather than disposing of this material.

As expressed in the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.,* and the Agency's pollution prevention policies, EPA generally prefers recycling to disposal of materials within the waste management hierarchy. This general preference is a factor EPA has considered here. Plastics recovered from ASR aggregate could be incorporated into a wide variety of consumer products such as appliances, house wares, office goods, electronics, and carpeting. Plastics from ASR aggregate could also be returned in a closed loop to the automotive market. Although some of the same categories of plastics recovered from ASR aggregate are also used in certain food contact and medical applications, these recycled plastics are not expected to make large inroads into demand for virgin materials for these applications due to the voluntary procedures described in this notice. These procedures require plastic recyclers to include contractual provisions in sales contracts expressly stating that plastics containing recycled material separated from ASR aggregate may contain PCBs, and therefore the recycled plastics may be unsuitable for many products that currently use virgin plastic, such as products that involve oral contact.

III. Summary of Approach

The interpretation under consideration would generally allow for the recycling of plastic separated from shredder residue under the conditions described in the Voluntary Procedures for Recycling Plastics from Shredder Residue (Ref. 1), relying principally on the regulatory provisions for excluded PCB products.

TSCA section 6(e) generally prohibits the manufacture, processing, distribution in commerce and use of PCBs. However, EPA has by regulation excluded certain materials, including excluded PCB products, from these prohibitions. Excluded PCB products are defined as follows:

Excluded PCB products means PCB materials which appear at concentrations less than 50 ppm, including but not limited to:

(1) Non-Aroclor inadvertently generated PCBs as a byproduct or impurity resulting from a chemical manufacturing process.

(2) Products contaminated with Aroclor or other PCB materials from historic PCB uses (investment casting waxes are one example).

(3) Recycled fluids and/or equipment contaminated during use involving the products described in paragraphs (1) and (2) of this definition (heat transfer and hydraulic fluids and equipment and other electrical equipment components and fluids are examples).

(4) Used oils, provided that in the cases of paragraphs (1) through (4) of this definition:

(i) The products or source of the products containing < 50 ppm concentration PCBs were legally manufactured, processed, distributed in commerce, or used before October 1, 1984.

(ii) The products or source of the products containing < 50 ppm concentrations PCBs were legally manufactured, processed, distributed in commerce, or used, i.e., pursuant to authority granted by EPA regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs;

(iii) The resulting PCB concentration (i.e. below 50 ppm) is not a result of dilution, or leaks and spills of PCBs in concentrations over 50 ppm. 40 CFR 761.3.

EPA regulations allow the use, processing, and distribution in commerce of excluded PCB products. 40 CFR 761.20(a) and (c). Except as otherwise specifically provided, the regulations do not restrict the forms of use, processing and distribution that are allowed. EPA specifically identified, as one likely source of PCBs in excluded PCB products, ''contamination during recycling activities involving'' historic PCBs. 52 FR 25838, 25844 (July 8, 1987). EPA believes that it is reasonable to interpret the regulations as generally allowing the recycling of excluded PCB products. Accordingly, under the interpretation discussed in this notice, to the extent that the feedstock (scrap materials) to a shredder consists of these kinds of materials, the plastics separated from the resulting residue could be recycled (and the resulting recycled product would also be an excluded PCB product that could be processed, used and distributed in commerce, including being further recycled), provided the PCB concentration in any resulting product is below 50 ppm.

Typically, the burden of demonstrating that a regulatory exclusion applies rests with the party seeking that exclusion. EPA believes that, for shredders and their suppliers that follow the Voluntary Procedures document, it is appropriate to generally treat the feedstock as consisting of excluded PCB products unless there is information specifically indicating that the feedstock does not qualify. If shredders and suppliers do not follow the voluntary procedures, they will need to be able to otherwise demonstrate that the feedstock and residue meet the exclusion. Clearly if the feedstock materials or residue contain PCBs at concentrations ≥ 50 ppm, the materials cannot qualify as excluded PCB products.

EPA acknowledges uncertainty as to the source of the PCBs in shredder residue. However, EPA believes the procedures, as explained in the Voluntary Procedures document, can prevent the introduction of PCBs at levels ≥ 50 ppm. EPA may periodically evaluate the processes and procedures involved in recycling plastics recovered from shredder residue. In addition, EPA believes it is likely that the number of potential sources of PCBs at levels ≥ 50 ppm has declined since the TSCA section 6(e) prohibitions went into effect. If PCBs in the feedstock material are < 50 ppm, it is plausible that the sources of PCBs in the residue are excluded PCB products. The information available to EPA indicates that the PCBs found associated with plastics separated from residue are Aroclor PCBs. Aroclors were intentionally manufactured PCB mixtures, not inadvertently generated PCBs. Since PCBs in general and Aroclors more specifically have not been intentionally produced in the U.S. since the prohibitions in TSCA section 6(e) became effective, the Aroclor identity of the PCBs found associated with plastics separated from shredder residue suggests that they were manufactured prior to 1984.

In promulgating the excluded PCB product rule, EPA described the provision as follows:

> EPA is adopting the generic 50 ppm exclusion for the processing, distribution in commerce, and use, based on the Agency's determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB concentration will not generally present an unreasonable risk of injury to health or the environment. EPA could not possibly identify and assess the potential exposures from all the products which may be contaminated with PCBs at less than 50 ppm. * * * EPA has concluded that the costs associated with the strict prohibition on PCB activities are large and outweigh the risks posed by these activities. 53 FR 24210 (June 27, 1988).

EPA has further stated, with respect to the excluded PCB products rule: ''These amendments have excluded the majority of low-level PCB activities (less than 50 ppm) from regulation'' (Ref. 7). Given the difficulty of determining the precise source of PCBs, EPA believes the purpose of excluding ''old'' PCBs under the excluded products rule is best effectuated in these circumstances by treating < 50 ppm materials entering a shredder as excluded PCB products unless there is information specifically indicating that the materials do not qualify.

EPA's regulations provide another potentially relevant exclusion from regulation for PCBs that result from an excluded manufacturing process. 40 CFR 761.3. EPA believes that this interpretation would also support recycling plastics if PCBs produced by an excluded manufacturing process are present in shredder feedstock. However, based on examination of data provided by ISRI in a ''Summary of Analysis Done on Plastics Recovered from Shredder Aggregate'' (Ref. 8), for four types of plastic recovered from shredder residue (i.e., ABS, HIPS, PP, HDPE (high density polyethylene)), EPA believes it is less likely that the PCBs that have been found associated with these plastics separated from shredder residue resulted from excluded manufacturing processes, because, among other things, EPA has not received notification from manufacturers required for these processes under 40 CFR 761.185.

EPA requests comment on the regulatory interpretation described above. EPA will accept comments for 30 days after date of publication in the **Federal Register**. If adopted, the interpretation would not be a legislative rule because it would not impose any binding requirements on either EPA or the regulated community. EPA is requesting comment on the approach because EPA is interested in the views of stakeholders on the approach, not because EPA intends to establish binding requirements.

IV. References

As indicated under **ADDRESSES**, a docket has been established for this notice under docket ID number EPA–HQ–OPPT–2012–0902. The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. ISRI. Voluntary Procedures for Recycling Plastics from Shredder Residue, October 24, 2012.

2. ISRI. Letter from Robin K. Weiner to Steve Owens, February 24, 2011.

3. ISRI. Letter Re: Docket ID No. EPA–HQ–OPPT–2009–0757—Advance Notice Of Proposed Rulemaking, Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations, August 20, 2010.

4. American Chemistry Council. Chemistry and Light Vehicles, August 2012, available at *http://www.plastics-car.com/lightvehiclereport.*

5. Nathan Associates, Inc. Economic Impacts and Environmental Benefits of Separating, Sorting, Processing, and Recycling Plastics in the Automobile and Appliance Shredder Aggregate, December 21, 2010.

6. Argonne National Laboratory. Recycling End-of-Life Vehicles of the Future, December 1, 2009, available at *http://www.ipd.anl.gov/anlpubs/2010/01/65969.pdf.*

7. EPA. PCB Q & A Manual: An EPA TSCA assistance document designed to provide the regulated community with Agency interpretations to frequently posed questions, 1994, available at *http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/manual.pdf.*

8. ISRI. Summary of Analysis Done on Plastics Recovered from Shredder Aggregate, Late 2010/Early 2011.

List of Subjects

Environmental protection, Hazardous substance, PCBs, Plastic, Polychlorinated biphenyls, Recycling, Shredder residue.

Dated: November 29, 2012.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–29904 Filed 12–11–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2012–0546]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP087613XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087613XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of commercial aircraft to Abu Dhabi, the United Arab Emirates

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between Abu Dhabi and destinations in the Middle East, Africa, Europe, Asia and North America

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Supplier: The Boeing Company.

Obligor: Etihad Airways PJSC.

Guarantor(s): N/A.

Description of Items Being Exported

Boeing 777 aircraft.

Information on Decision

Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information

Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before January 7, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2012–0048 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2012–0048 on any attached document.

December 6, 2012.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2012–29938 Filed 12–11–12; 8:45 am]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2012, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

- November 8, 2012

New Business

- Farmer Mac Capital Planning—Proposed Rule

Reports

- Quarterly Report on Office of Examination Operations, Economic Conditions Affecting the Farm Credit System (FCS), and FCS Condition and Performance

Closed Session*

Reports

- Office of Examination Supervisory and Oversight Activities Report

Date: December 7, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–30036 Filed 12–10–12; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 06–122; DA 12–1872]

Proposed Changes to FCC Form 499–A, FCC Form 499–Q, and Accompanying Instructions

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks comment on proposed revisions to the annual Telecommunications Reporting Worksheet, FCC Form 499–A (Form 499–A) and accompanying instructions (Form 499–A Instructions) to be used in 2013 to report 2012 revenues, and the quarterly Telecommunications Reporting Worksheet, FCC Form 499–Q (Form 499–Q) and accompanying instructions (Form 499–Q Instructions) to be used in 2013 to report projected collected revenues on a quarterly basis.

DATES: Comments are due on or before January 11, 2013.

ADDRESSES: Interested parties may file comments on or before January 11,

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

2013. All pleadings are to reference WC Docket No. 06–122. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Ernesto Beckford, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 06–122; DA 12–1872, released November 23, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*.

I. Synopsis of Public Notice

1. In order to promote clarity, transparency and predictability, the Wireline Competition Bureau (Bureau) seeks comment on proposed revisions to (1) the annual Telecommunications Reporting Worksheet, FCC Form 499–A (Form 499–A) and accompanying instructions (Form 499–A Instructions) to be used in 2013 to report 2012 revenues, and (2) the quarterly Telecommunications Reporting Worksheet, FCC Form 499–Q (Form 499–Q) and accompanying instructions (Form 499–Q Instructions) to be used in 2013 to report projected collected revenues on a quarterly basis. The revisions to the forms and instructions are attached to the Public Notice in redline format, showing proposed changes from the forms and instructions currently in effect. The redlines may be viewed on the Commission's Web site, as follows: Form 499–A, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1872A2.pdf;* Form 499–A Instructions, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1872A3.pdf;* Form 499–Q, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1872A4.pdf;* and Form 499–Q Instructions available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1872A5.pdf*.

II. Discussion

The proposed revisions include the following modifications:

2. *Stylistic Changes.* In several instances, wording in the instructions was revised for clarification purposes, without changing the substance.

3. *Date Changes.* Dates were updated throughout. References to ''2012'' were changed to ''2013,'' and references to ''2011'' were changed to ''2012.''

4. *Web Pages.* Hyperlinks were revised as appropriate throughout the Form 499–A Instructions and the Form 499–Q Instructions.

5. *Estimation Factor.* Appendix A of the Form 499–A Instructions (at Line 10) and Figure 1 of the Form 499–Q Instructions (at Line 16) contain the estimation factor to be used by filers to determine *de minimis* status. The estimation factor for 2013 is 0.162.

6. *Charges Allowed by USF/ICC Transformation Order.* In the *USF/ICC Transformation Order* (26 FCC Rcd 17663), the Commission allowed incumbent local exchange carriers (LECs) to charge an access recovery charge (ARC) on wireline telephone service to partially offset intercarrier compensation revenue declines resulting from the transition of certain switched access rates adopted as part of the comprehensive intercarrier compensation reform. The Form 499–A Instructions were revised at page 17 (Line 405) to list the ARC as a type of charge to end users (specified in access tariffs) reportable under Line 405. Similarly, the *USF/ICC Transformation Order* allows per-minute charges for originating or terminating voice over Internet Protocol (VoIP)/public switched telephone traffic. The Form 499–A Instructions were revised at page 16 (Line 304) to list such charges as a type of per-minute originating and terminating charge reportable on Line 304.

7. *Filing Schedule.* Table 1 of the Form 499–A Instructions and Figure 2 of the Form 499–Q Instructions were revised to clarify the filing addresses for Form 499–A, Form 499–Q, Traffic Studies, and the Consolidated Filer Certification. Form 499–Q (Line 113) was revised to allow filers to check the applicable quarter for which the form is being filed.

8. *Mergers.* Pages 9 and 14 of the Form 499–A Instructions were revised to clarify the procedures for successor companies to report the revenues of acquired entities.

9. *Holding Company and Affiliates.* Form 499–A (Line 106.1), Form 499–Q (Line 105), page 11 of the Form 499–A Instructions, and page 11 of the Form 499–Q Instructions were revised to include a checkbox for filers to indicate whether they have affiliates. Affiliates should list the same holding company on Form 499–A and Form 499–Q. Form 499–Q (Line 105.1) was revised to include the Internal Revenue Service (IRS) employer identification number (EIN) for the filer's holding company.

10. *Definition of Affiliate.* The definition of the term affiliate is added on pages 10–11 of the Form 499–A Instructions and page 10 of the Form 499–Q Instructions. This definition is the same as the definition contained in Appendix A of the Form 499–A Instructions and Figure 1 of the Form 499–Q Instructions.

11. *Ink Signature Requirement.* Page 19 of the Form 499–A Instructions and page 19 of the Form 499–Q Instructions were revised to clarify that an original ink signature is required from an officer when he or she first files a form. Subsequent forms signed by the same officer may be signed electronically.

12. *Subscriber Line Charges and Exchange Access Service.* In order to better reflect Commission precedent and rules, we are deleting the following language from the discussion of Line 404 in the Form 499–A Instructions: ''Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls. Filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues in column (d) of the appropriate line 404.1.'' We consolidated on page 17 of the Form 499–A Instructions the description of what federal subscriber line charges (SLCs) are and added language clarifying that carriers that elect to charge end users for the

provision of interstate exchange access service through a separately stated charge (*e.g.,* a SLC) should report such revenues on Line 405. Conforming changes were made at page 14 of the Form 499–Q Instructions.

13. *Special Access on Common Carrier Basis.* Page 18 of the Form 499–A Instructions were revised to remind filers that they should report, on Line 406, revenues derived from the sale of special access on a common carrier basis to providers of retail broadband Internet access service.

14. *Definition of ''Toll Services'' for Wireless Providers.* Pages 19–20 of the Form 499–A Instructions were revised to include a cross reference to Commission orders defining ''toll services'' for wireless providers.

15. *Carrier's Carrier Revenues.* Pages 22–23 of the Form 499–A Instructions were revised to provide additional examples of intercarrier compensation that should be reported in Block 3 (carrier's carrier revenues) and not in Block 4 (end user revenues).

16. *Traffic Studies.* Page 28 of the Form 499–A Instructions and page 16 of the Form 499–Q Instructions were revised to include format headings to be used when filing traffic studies, to assist in administrative processing. These headings are intended to help identify each filer submitting traffic studies in order to properly match the traffic study with such filer's Form 499–A and Form 499–Q filings.

17. *Consistency in Traffic Study or Safe Harbor Elections.* Page 27 of the Form 499–A Instructions and pages 15–17 of the Form 499–Q Instructions were revised to clarify the requirement that the same election made by a filer on its Form 499–Q filings to use either a safe harbor or traffic studies to project revenues for a particular quarter must be used on the filer's Form 499–A for reporting historical revenues for that particular quarter. Form 499–Q (Line 114) was revised to include a check box when filers use safe harbors for reporting revenue allocations.

18. *Percentage of Revenues Billed Per Region.* Lines 503 through 510 of Form 499–A currently require filers to report the percentage of telecommunications revenues billed by LNPA region. Page 30 of the Form 499–A Instructions was revised to clarify that filers may use customer billing addresses to calculate or estimate this percentage.

19. *''Reseller'' Sample Certification Language.* Consistent with the recently adopted *2012 Wholesaler-Reseller Clarification Order* (FCC 12–134), pages 22–25 of the Form 499–A Instructions and pages 11–12 of the Form 499–Q Instructions were revised to clarify that providers may rely on reseller certificates that are consistent with the sample language contained in the 2012 FCC Forms 499 instructions, and included herein for illustrative purposes, through December 31, 2013. The Instructions were also revised to delete the suggested procedure to check the Commission's Web site to ascertain whether a carrier customer is a contributor to the USF, because such action, by itself, is insufficient to satisfy the reasonable expectation standard. Pages 24–25 of the Form 499–A Instructions were revised to include new sample certification language that providers may utilize to satisfy the reasonable expectation standard, pending adoption of any rule changes in the pending universal service contribution reform rulemaking.

20. *Deleted Language.*

• *Rounding Percentages.* Page 10 of the Form 499–A Instructions was revised to delete instructions requiring revenues to be rounded to the nearest whole percent. Revenues should not be rounded to whole numbers. This is consistent with the safe harbors for interstate/intrastate revenues, which are not whole numbers.

• *Revenues from Affiliates.* In order to better reflect Commission precedent and rules, page 14 of the Form 499–A Instructions was revised to delete the following language: ''Gross billed revenues also do not include revenues (imputed or otherwise) for services provided to the filer itself or from one wholly owned affiliate to another unless: (1) the filer is required to record such revenues for some other federal or state regulatory purpose; or (2) the filer is providing service to an affiliate for resale and the affiliate is not a direct universal service contributor.'' Similar language was deleted from page 13 of the Form 499–Q Instructions.

21. *Paperwork Reduction Act of 1995.* This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees, pursuant to the Small Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

22. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. All pleadings are to reference WC Docket No. 06–122. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/*. Filers should follow the instructions provided on the Web site for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432

Additional copies. One copy of each filing must be sent to each of the following:

• The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, *www.bcpiweb.com;* phone: (202) 488–5300 fax: (202) 488–5563;

• Ernesto Beckford, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A317, Washington, DC 20554; email: *Ernesto.Beckford@fcc.gov* and

• Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

23. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via email *www.bcpiweb.com*.

24. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Trent B. Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2012–29963 Filed 12–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010979–051.

Title: Caribbean Shipowners Association.

Parties: CMA CGM, S.A.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW.; Washington, DC 20006–4007.

Synopsis: The amendment would add Tropical Shipping and Construction Company Limited as a party to the agreement.

Agreement No.: 012008–006.

Title: The 360 Quality Association Agreement.

Parties: Ambassador Services, Inc., NYKCool AB, and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Diamond State Port Corporation and Gloucester Terminals LLC as parties to the agreement.

Agreement No.: 012191.

Title: HSDG–CCNI USWC Space Charter Agreement.

Parties: Hamburg Sud and Compania Chilena De Navegacion Interoceanica, S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Hamburg Sud to charter space to CCNI in the trade between ports in California and ports in Mexico, Guatemala, Panama, Ecuador, and Peru.

By Order of the Federal Maritime Commission.

Dated: December 7, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–29961 Filed 12–11–12; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10:00 a.m. (Eastern Time) December 17, 2012.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: All parts will be open to the public.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the November 27, 2012 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Acting Executive Director
   a. Monthly Participant Activity Report
   b. Monthly Investment Performance Report
   c. Legislative Report
3. Internal Audit Memo

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: December 10, 2012.

Megan Grumbine,

Acting Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–30092 Filed 12–10–12; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-ScottRodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each

transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
NOVEMBER 1, 2012 THRU NOVEMBER 30, 2012

11/01/2012		
20130085	G	Curtiss-Wright Corporation; Linx Partners II, L.P.; Curtiss-Wright Corporation.
20130086	G	Bain Capital Fund X, L.P.; Danaher Corporation; Bain Capital Fund X, L.P.
20130088	G	Bain Capital Fund X, L.P.; Cooper Industries PLC; Bain Capital Fund X, L.P.
11/02/2012		
20130029	G	Value Act Capital Master Fund, L.P.; Rockwell Collins, Inc.; Value Act Capital Master Fund, L.P.
20130039	G	Corvex Master Fund LP; The ADT Corporation; Corvex Master Fund LP.
20130076	G	Green Equity Investors V, L.P.; J.W. Childs Equity Partners III, L.P.; Green Equity Investors V, L.P.
20130087	G	CRH plc; Trap Rock Industries LLC; CRH plc.
11/05/2012		
20130073	G	ITOCHU Corporation; David H. Murdock; ITOCHU Corporation.
20130092	G	Mitsubishi UFJ Lease & Finance Company Limited; JSA International Holdings, L.P.; Mitsubishi UFJ Lease & Finance Company Limited.
20130093	G	Koch Industries, Inc.; Advanced BioEnergy, LLC; Koch Industries, Inc.
20130094	G	Oaktree Power Opportunities Fund III, L.P.; Lindsay Goldberg & Bessemer II L.P.; Oalctree Power Opportunities Fund III, L.P.
20130095	G	TSG 6 AIV II L.P.; Planet Fitness Holdings, LLC; TSG 6 MV II L.P.
20130097	G	Dover Corporation; Avista Capital Partners II, L.P.; Dover Corporation.
11/06/2012		
20130066	G	Onex Partners III International LP; MPM Equity II LLC; Onex Partners III International LP.
20130068	G	International Shipholding Corporation; GS Maritime Holding LLC; International Shipholding Corporation.
20130096	G	Carlyle Partners V US, L.P.; Carlyle Partners IV Telecommunications, L.P.; Carlyle Partners V US, L.P.
20130105	G	PensionDanmark Holding A/S; E.ON AG; PensionDanmark Holding A/S.
11/07/2012		
20121011	G	Marubeni Corporation; Gavilon SuperHoldco, LLC; Marubeni Corporation.
20130106	G	Sentinel Capital Partners IV, L.P.; Rod Hildebrant; Sentinel Capital Partners IV, L.P.
11/08/2012		
20130110	G	Rain Commodities Limited; Triton Fund II LP; Rain Commodities Limited.
11/09/2012		
20130082	G	Pearson plc; EBNT USA Holding Inc.; Pearson plc.
20130111	G	Marathon Petroleum Corporation; BP p.l.c.; Marathon Petroleum Corporation.
20130113	G	TowerBrook Investors III, L.P.; Vistage International Inc.; TowerBrook Investors III, L.P.
20130115	G	The Andersons, Inc.; Green Plains Renewable Energy, Inc.; The Andersons, Inc.
20130120	G	Energy Trading Innovations LLC; Louis Dreyfus Highridge Energy LLC; Energy Trading Innovations LLC.
20130122	G	Nihon Kohden Corporation; Defibtech, LLC; Nihon Kohden Corporation.
20130123	G	CME Group Inc.; The Board of Trade of Kansas City, Missouri, Inc.; CME Group Inc.
20130127	G	Zep Inc.; Ecolab Inc.; Zep Inc.
20130132	G	Empeiria Acquisition Corporation; Stephen D. Cope; Empeiria Acquisition Corporation.
20130135	G	Al Garden BV; Mediq N.V.; Al Garden BV.
20130136	G	Menasha Corporation; Rand Diversified Companies, LLC; Menasha Corporation.
20130137	G	Canada Pension Flan Investment Board; Halcon Resources Corporation; Canada Pension Plan Investment Board.
20130139	G	William Herbert Hunt Trust Estate; Halcon Resources Corporation; William Herbert Hunt Trust Estate.
20130141	G	Isabella Seragnoli; Odewald & Compagnie GmbH & Co.; Isabella Seragnoli.
20130142	G	Emeritus Corporation; Kinderhook Capital Fund I, L.P.; Emeritus Corporation.
20130143	G	Global Generations International Inc.; Ancestry.com Inc.; Global Generations International Inc.
20130145	G	Audax Private Equity Fund IV, L.P.; John M. Thalheimer; Audax Private Equity Fund IV, L.P.
20130148	G	Madison Dearborn Capital Partners VI–B, L.P.; Sage Products, Inc.; Madison Dearborn Capital Partners VI–B, L.P.
20130150	G	Warburg Pincus Private Equity XI, L.P.; Van Trac; Warburg Pincus Private Equity XI, L.P.
11/13/2012		
20130063	G	Johnson & Johnson; Astellas Pharma Inc.; Johnson & Johnson.
20130144	G	Charles W. Ergen; Cablevision Systems Corporation; Charles W. Ergen.

EARLY TERMINATIONS GRANTED—Continued
NOVEMBER 1, 2012 THRU NOVEMBER 30, 2012

11/14/2012		
20111160	G	Entergy Corporation; KGen Power Corporation; Entergy Corporation.
20130140	G	Corinthian Equity Fund, L.P.; Jolley, Castillo, Drennon, Ltd.; Corinthian Equity Fund, L.P.
11/15/2012		
20121402	G	Valeant Pharmaceuticals International, Inc.; Medicis Pharmaceutical Corporation; Valeant Pharmaceuticals nternational, Inc.
20130155	G	Travel Leaders Group, LLC; Priscilla Alexander; Travel Leaders Group, LLC.
11/16/201		
20121161	G	Star Atlantic Waste Holdings, L.P.; Veolia Environment S.A.; Star Atlantic Waste Holdings, L.P.
11/19/2012		
20130089	G	Merck & Co., Inc.; Santo Holding AG; Merck & Co.; Inc.
20130100	G	Healthfirst, Inc.; Neighborhood Health Providers, Inc.; Healthfirst, Inc.
20130107	G	Bain Capital AM Holding, LLC; Patrick J. McDonald; Bain Capital AM Holding, LLC.
20130146	G	Carl C. Icahn; Netflix, Inc.; Carl C. Icahn.
20130151	G	Ray Investment S.a.r.l.; Munro Enterprises, LLP; Ray Investment S.a.r.l.
20130153	G	Berkshire Hathaway Inc.; OTC Worldwide Holdings, Inc.; Berkshire Hathaway Inc.
20130154	G	The Hearst Family Trust; Milliman, Inc.; The Hearst Family Trust.
20130161	G	ABRY Partners VII, L.P.; Herbert F. Pardula; ABRY Partners VII, L.P.
20130164	G	Servco Pacific Inc.; Fender Musical Instruments Corporation; Servco Pacific Inc.
20130169	G	Li & Fung Limited; Mark Kra; Li & Fung Limited.
20130174	G	Oaktree Power Opportunities Fund III, L.P.; Shermco Industries, Inc.; Oaktree Power Opportunities Fund III, L.P.
20130178	G	Alliance Data Systems Corporation; Lake Capital Partners II; Alliance Data Systems Corporation.
11/20/2012		
20130172	G	Copersucar S.A.; Larry Beckwith; Copersucar S.A.
20130173	G	Ute Energy Holdings LLC; Ute Energy LLC; Ute Energy Holdings LLC.
11/21/2012		
20120507	G	Robert Bosch Industrietreuhand KG; SPX Corporation; Robert Bosch Industrietreuhand KG.
20130180	G	PolyOne Corporation; Spartech Corporation; PolyOne Corporation.
20130182	G	New Mountain Partners III, L.P.; JDA Software Group, Inc.; New Mountain Partners III, L.P.
20130185	G	NuStar Energy L.P.; EIG BlackBrush Holdings, LLC; NuStar Energy L.P.
20130200	G	Curtiss-Wright Corporation; Williams Controls, Inc.; Curtiss-Wright Corporation.
11/23/2012		
20130138	G	Wolters Kluwer N.V.; Health Language, Inc.; Wolters Kluwer N.V.
20130167	G	TPG-Axon Partners, LP; SandRidge Energy, Inc.; TPG-Axon Partners, LP.
20130168	G	TPG-Axon Partners (Offshore), Ltd.; SandRidge Energy, Inc.; TPG-Axon Partners (Offshore), Ltd.
20130187	G	Calera Capital Partners IV, L.P.; Falconhead Capital Partners II, L.P.; Calera Capital Partners IV, L.P.
20130191	G	PVH Corp.; The Warnaco Group, Inc.; PVH Corp.
20130193	G	Mayville Engineering Company, Inc. ESOT; Industrial Opportunity Partners, LP; Mayville Engineering Company, Inc. ESOT.
20130194	G	William R. Berkley; W.R. Berkley Corporation; William R. Berkley.
20130204	G	Novacap Industries III, L.P.; Prospect Partners II, L.P.; Novacap Industries III, L.P.
20130212	G	Publicis Groupe S.A.; LBi International N.V.; Publicis Groupe S.A.
20130219	G	Stifel Financial Corp.; KBW, Inc.; Stifel Financial Corp.
11/26/2012		
20130112	G	Vantiv, Inc.; Litle Holdings LLC; Vantiv, Inc.
11/27/2012		
20130206	G	Robert E. Rich, Jr.; James Farrell and Catherine Farrell; Robert E. Rich, Jr.
20130210	G	Starbucks Corporation; Andrew T. Mack; Starbucks Corporation.
20130214	G	Westerman Interests, Inc.; Enerven Compression LLC; Westerman Interests, Inc.
20130215	G	The Kroger Co.; Carousel Capital Partners III, L.P.; The Kroger Co.
20130216	G	Charles Equity Fund VII, Limited Partnership; Gores Capital Partners II, L.P.; Charles Equity Fund VII, Limited Partnership.
20130217	G	Harbour Group Investments V, L.P.; Wellspring Capital Partners IV, L.P.; Harbour Group Investments V. L.P.
20130221	G	MidOcean Partners III, L.P.; Nautic Partners V, L.P.; MidOcean Partners III, L.P.
20130228	G	Robert E. Rich, Jr.; Goglanian Bakeries, Inc.; Robert E. Rich, Jr.
20130229	G	Reckitt Benckiser Group plc-; Eric Weider; Reckitt Benckiser Group plc.

EARLY TERMINATIONS GRANTED—Continued
NOVEMBER 1, 2012 THRU NOVEMBER 30, 2012

20130241	G	Sony Corporation; DIRECTV; Sony Corporation.
11/28/2012		
20130121	G	Inova Health System Foundation; AMERIGROUP Corporation; Inova Health System Foundation.
20130181	G	Humana Inc.; Metropolitan Health Networks, Inc.; Humana Inc.
20130226	G	Harborstone Credit Union; Prevail Credit Union; Harborstone Credit Union.
20130250	G	MTIC Holdings Corp.; West First Management Corp.; MTIC Holdings Corp.
11/29/2012		
20130131	G	University of MD Medical System, Corp.; Catholic Health Initiatives; University of MD Medical System, Corp.
20130156	G	Warburg Pincus Private Equity X, LP; ESCO Corporation; Warburg Pincus Private Equity X, LP.
20130160	G	Quad-C Partners VII, L.P.; Micahael Sheldon; Quad-C Partners VII, L.P.
20130162	G	JLL Partners Fund V, L.P.; Noordbrantse Christelijke Boerenbond; JLL Partners Fund V, L.P.
20130175	G	Nippon Telegraph and Telephone Corporation; Seaport Capital Partners II, L.P.; Nippon Telegraph and Telephone Corporation.
20130203	G	Royal DSM N.V.; Fortitech, Inc.; Royal DSM N.V.
20130222	G	Energy Capital Partners II–A, L.P.; Calpine Corporation; Energy Capital Partners II–A, L.P.
20130230	G	Harbinger Group Inc.; EXCO/HGI Production Partners, LP; Harbinger Group Inc.
20130232	G	Charles F. Dolan and Helen A. Dolan; The Madison Square Garden Company; Charles F. Dolan and Helen A. Dolan.
20130237	G	Gulf Oil Corporation Limited; AEA Investors 2006 Fund L.P.; Gulf Oil Corporation Limited.
20130238	G	Targa Resources Partners LP; Saddle Butte Pipeline LLC; Targa Resources Partners LP.
20130245	G	Ocwen Financial Corporation; Residential Capital, LLC; Ocwen Financial Corporation.
11/30/2012		
20121152	G	WellPoint, Inc.; Amerigroup Corporation; WellPoint, Inc.
20130246	G	Welsh, Carson, Anderson & Stowe IX, L.P.; Baptist General Convention of Texas; Welsh, Carson, Anderson & Stowe IX, L.P.
20130247	G	Welsh, Carson, Anderson & Stowe IX, L.P.; CHRISTUS Health; Welsh, Carson, Anderson & Stowe IX, L.P.
20130248	G	Verizon Communications Inc.; Deutsche Telekom AG; Verizon Communications Inc.
20130249	G	Deutsche Telekom AG; Verizon Communications; Deutsche Telekom AG.
20130251	G	Adage Capital Partners, L.P.; Puma Biotechnology, Inc.; Adage Capital Partners, L.P.

FOR FURTHER INFORMATION CONTACT:
Renee Chapman, Contact Representative, or
Theresa Kingsberry, Legal Assistant,
Federal Trade Commission,
Premerger Notification Office,
Bureau of Competition,
Room H–303,
Washington, DC 20580,
(202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–29906 Filed 12–11–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held from February 7 to February 8, 2013 from 9:00 a.m. to approximately 5:00 p.m. (EST) on both days.

ADDRESSES: U.S. Department of Health and Human Services at 200 Independence Avenue SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Assistant, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the Council's Web site at *www.aids.gov/pacha*.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at *caroline.talev@hhs.gov.* Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must

register with Caroline Talev at *caroline.talev@hhs.gov;* registration for public comment will not be accepted by telephone. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting should submit, at a minimum, 1 copy of the materials to Caroline Talev, no later than close of business Thursday, January 31, 2013. Contact information for the PACHA contact person is listed above.

Dated: November 29, 2012.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2012–29910 Filed 12–11–12; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a conference call. The call will be open to the public.

DATES: The call will be held January 7, 2013 at 1:00 p.m. (EST) to approximately 2:00 p.m. (EST).

ADDRESSES: The call-in number is 800–857–1237 and the participant pass code is 7293236.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Assistant, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the Council's Web site *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.*

Pre-registration for the call is advisable and can be accomplished by contacting Caroline Talev at *caroline.talev@hhs.gov.* Members of the public will have the opportunity to listen in on the phone call.

Dated: December 3, 2012.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2012–30026 Filed 12–11–12; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–0009]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Disease Surveillance Program (OMB No. 0920–0009 Expiration 4/30/2013)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Formal surveillance of 16 separate reportable diseases has been ongoing to meet the public demand and scientific interest in accurate, consistent, epidemiologic data. These ongoing disease reports include: Creutzfeldt-Jakob Disease (CJD), Cyclosporiasis, Dengue, Hantavirus, Kawasaki Syndrome, Legionellosis, Lyme disease, Malaria, Plague, Q Fever, Reye Syndrome, Tickborne Rickettsial Disease, Trichinosis, Tularemia, Typhoid Fever, and Viral Hepatitis. Case report forms from state and territorial health departments enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. There are no changes since the last submission.

The purpose of the proposed study is to direct epidemiologic investigations, identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and develop guidelines for prevention and treatment. The data collected will also be used to recommend target areas most in need of vaccinations for selected diseases and to determine development of drug resistance. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. There is no cost to respondents other than their time.

Form	Type of respondent	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden hours
CJD	Epidemiologist	20	2	20/60	13
Cyclosporiasis	Epidemiologist	55	10	15/60	138
Dengue	Epidemiologist	55	182	15/60	2,503
Hantavirus	Epidemiologist	40	3	20/60	40
Kawasaki Syndrome	Epidemiologist	55	8	15/60	110
Legionellosis	Epidemiologist	23	12	20/60	92
Lyme Disease	Epidemiologist	52	385	10/60	3,337
Malaria	Epidemiologist	55	20	15/60	275
Plague	Epidemiologist	11	1	20/60	4
Q Fever	Epidemiologist	55	1	10/60	9
Reye Syndrome	Epidemiologist	50	1	20/60	17
Tick-borne Rickettsia	Epidemiologist	55	18	10/60	165
Trichinosis	Epidemiologist	25	1	20/60	8
Tularemia	Epidemiologist	55	2	20/60	37
Typhoid Fever	Epidemiologist	55	6	20/60	110
Viral hepatitis	Epidemiologist	55	200	25/60	4,583
Total					11,441

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science Office of the Director Centers for Disease Control and Prevention.

[FR Doc. 2012–30021 Filed 12–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10280 and CMS–R–131]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title:* Home Health Change of Care Notice (HHCCN); *Use:* Home health agencies (HHAs) are required to provide written notice to original Medicare beneficiaries under various circumstances involving the initiation, reduction, or termination of services. The notice used in these situations has been the Home Health Advance Beneficiary Notice (HHABN), CMS–R–296.

The HHABN, originally a liability notice specifically for HHA issuance, was first approved for use and implementation in 2000 with the home health prospective payment system transition. In 2006, the notice underwent significant modifications subsequent to the decision of the U.S. Court of Appeals (2nd Circuit) in *Lutwin* v. *Thompson.* HHABN content and formatting were revised so that it could be used to provide beneficiaries with change of care notification consistent with HHA Conditions of Participation (COPs) in addition to its liability notice function. Three interchangeable option boxes were introduced to the HHABN to support the added notification purposes. Option Box 1 addressed liability, Option Box 2 addressed change of care for agency reasons, and Option Box 3 addressed change of care due to provider orders. HHABN Collection 0938–0781 last received PRA approval in 2009 following minor notice changes such as accessibility reformatting for compliance with Section 508 of the Rehabilitation Act of 1973, as amended in 1998, and removal of the beneficiary's health insurance claim number (HICN).

In an effort to streamline, reduce, and simplify notices issued to Medicare beneficiaries, HHABN Option Box 1, the liability notice portion, will be replaced by the existing Advanced Beneficiary Notice of Noncoverage (ABN) which is approved by OMB (0938–0566), for conveying information on beneficiary liability. Written notices to inform beneficiaries of their liability under specific conditions have been available since the ''limitation on liability'' provisions in section 1879 of the Social Security Act were enacted in 1972 (Pub. L. 92–603). The ABN (CMS–R–131) is presently used by providers and suppliers other than HHAs to inform fee for service (FFS) Medicare beneficiaries of potential liability for certain items/services that might be billed to Medicare. The HHABN was developed specifically as the liability notice for HHA issuance. Since 2006, the HHABN has evolved to serve both liability and change of care notification purposes. Pursuant to a separate PRA package revising the use of the ABN, HHAs will now use the ABN for liability notification, and the HHCCN will be introduced as a separate, distinct document to give change of care notice in compliance with HHA conditions of participation. The HHCCN will replace both Option Box 2 and Option Box 3 formats of the HHABN. The single page format of the HHCCN is designed to specify whether the change of care is due to agency reasons or provider orders. *Form Number:* CMS–10280 (OCN: 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 10,914; *Total Annual Responses:* 14,126,428; *Total Annual Hours:* 941,385. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Use:* The use of written notices to inform beneficiaries of their liability under specific conditions has been available since Title XVIII of the Social Security Act (the Act), section 1879, Limitation on Liability, was enacted in 1972 (Pub. L. 92–603). Similar required notification and liability protections are available under other sections of the Act: Section 1834(a)(18) refund requirements for certain items when unsolicited telephone contacts are made, section 1834(j)(4) for the same types of items when there is neither a required advance coverage determination nor required supplier number; 1834(a)(15) also for advance determinations for these items and section 1842(l) applicable to physicians not accepting assignment. Implementing regulations are found at 42 CFR 411.404(b) and (c), and 411.408(d)(2) and (f), on written notice requirements. These statutory requirements apply only to Original Medicare, not Medicare Advantage plans.

Under section 1879 of the Act, Medicare beneficiaries may be held financially responsible for items or services usually covered under Medicare, but denied in an individual case under specific statutory exclusions, if the beneficiary is informed prior to furnishing the issues or services that Medicare is likely to deny payment.

When required, the ABN is delivered by Part B paid physicians, providers (including institutional providers like outpatient hospitals) practitioners (such as chiropractors), and suppliers, as well as hospice providers and Religious Non-medical Health Care Institutions paid under Part A. Other Medicare institutional providers paid under Part A use other approved notice for this purpose.

The revised ABN in this information collection request incorporates expanded use by Home Health Agencies (HHAs). There have been no substantive changes to the form. There are no changes that will affect existing ABN users. *Form Number:* CMS–R–131 (OMB#: 0938–0566); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,288,837; *Total Annual Responses:* 52,967,771; *Total Annual Hours:* 6,177,101. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. 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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *February 11, 2013:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 7, 2012.

Martique Jones,

Director, Division of Regulations Development-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–29951 Filed 12–11–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10451]

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects a technical error in the notice [Document Identifier: CMS–10451] entitled ''Evaluation and Development of Outcome Measures for Quality Assessment in Medicare Advantage and Special Needs Plans'' that was published in the October 26, 2012 (77 FR 65391) **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William Parham, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the FR Doc. 2012–16514 of October 26, 2012 (77 FR 65391), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the document entitled ''Evaluation and Development of Outcome Measures for Quality Assessment in Medicare Advantage and Special Needs Plans.''

There were technical delays with making the information collection request publicly available; therefore, in this notice we are extending the comment period from the date originally listed in the October 26, 2012 notice.

II. Correction of Error

In FR Doc. 2012–26380 of October 26, 2012 (77 FR 65391), make the following correction:

On page 65391, second column, third full paragraph, fourth line, the sentence, ''To be assured consideration, comments and recommendations must be submitted in one of the following ways by December 26, 2012:'' is corrected to read ''To be assured consideration, comments and recommendations must be submitted in one of the following ways by January 2, 2012:''.

Dated: December 7, 2012.

Martique Jones,

Director, Division of Regulations Development-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–29956 Filed 12–11–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Privacy Act of 1974; Computer Matching Agreement

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of a Computer Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Temporary Assistance for Needy Families (TANF) program.

DATES: HHS invites interested parties to review, submit written data, comments,

or arguments to the agency about the matching program until January 11, 2013. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on, November 29, 2012, sent a report of a Computer Matching Program to the Committee on Homeland Security and Governmental Affairs of the Senate, the House Committee on Oversight and Government Reform and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

ADDRESSES: Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447, 202–401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records are matched with other federal, state or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any federal agency participating in a matching program.

This matching program meets these requirements.

Dated: November 6, 2012.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

Notice of New Computer Matching Program

A. Participating Agencies

The participating agencies are OCSE, which is the ''source agency,'' and state agencies administering the TANF program, which are the ''non-federal agencies.''

B. Purpose of the Matching Program

The purpose of the matching program is to provide new hire, quarterly wage (QW), and unemployment insurance (UI) information from OCSE's National Directory of New Hires (NDNH) to state agencies administering TANF for the purpose of verifying the eligibility of adult TANF recipients and applicants and, if ineligible, to take such action as may be authorized by law and regulation. The State Agencies may also use the NDNH information for the purpose of updating the applicants and recipients' reported participation in work activities and updating contact information maintained by the state agencies administering TANF.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act. 42 U.S.C. 653(j)(3).

D. Categories of Individuals Involved and Identification of Records Used in the Matching Program

The categories of individuals involved in the matching program are adult applicants for and recipients of benefits under the state TANF program. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, last published in the **Federal Register** at 76 FR 560 on January 5, 2011. The NDNH contains new hire, QW and UI information. The disclosure of NDNH information by OCSE to the state agencies administering TANF is a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to State Agencies administering TANF include names, Social Security numbers, home addresses and employment information.

E. Inclusive Dates of the Matching Program

The computer matching agreement will be effective and matching activity may commence the later of the following:

(1) 30 days after this notice is published in the **Federal Register** or (2) 40 days after OCSE sends a report of the matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A); and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. 2012–30006 Filed 12–11–12; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Privacy Act of 1974; Computer Matching Agreement

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of a Computer Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Unemployment Compensation (UC) program.

DATES: HHS invites interested parties to review, submit written data, comments or arguments to the agency about the matching program until January 11, 2013. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on November 29, 2012, sent a report of a Computer Matching Program to the Committee on Homeland Security and Governmental Affairs of the Senate, the House Committee on Oversight and Government Reform and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

ADDRESSES: Interested parties may submit written comment on this notice by writing to Linda Deimeke, Director,

Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447, 202–401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records are matched with other federal, state or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments;
4. Publish notice of the computer matching program in the **Federal Register**;
5. Furnish reports about the matching program to Congress and OMB; and
6. Obtain the approval of the matching agreement by the Data Integrity Board of any federal agency participating in a matching program.

This matching program meets these requirements.

Dated: November 7, 2012.

Vicki Turetsky,

Commissioner, Office of Child Support Enforcement.

Notice of New Computer Matching Program

A. Participating Agencies

The participating agencies are OCSE, which is the ''source agency,'' and state agencies administering the UC program, which are the ''non-federal agencies.''

B. Purpose of the Matching Program

The purpose of the matching program is to provide new hire and quarterly wage (QW) information from OCSE's National Directory of New Hires (NDNH) to state agencies administering UC programs for the purpose of establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, or recipients of, UC benefits. The State Agencies administering the UC programs may also use the NDNH information for the administration of its tax compliance function.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in Section 453(j)(8) of the Social Security Act. 42 U.S.C. 653(j)(8).

D. Categories of Individuals Involved and Identification of Records Used in the Matching Program

The categories of individuals involved in the matching program are applicants for and recipients of benefits under UC programs administered by state agencies. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, last published in the **Federal Register** at 76 FR 560 on January 5, 2011. The NDNH contains new hire, QW and unemployment insurance information. The disclosure of NDNH information by OCSE to the state agencies administering UC programs is a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to the state agencies administering UC programs include names, Social Security numbers, home addresses and employment information.

E. Inclusive Dates of the Matching Program

The computer matching agreement will be effective and matching activity may commence the later of the following:

(1) 30 days after this Notice is published in the **Federal Register** or (2) 40 days after OCSE sends a report of the matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A); and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. 2012–30018 Filed 12–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0568]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study: Disease Information in Branded Promotional Material

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Experimental Study: Disease Information in Branded Promotional Material'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On June 20, 2012, the Agency submitted a proposed collection of information entitled ''Experimental Study: Disease Information in Branded Promotional Material'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0724. The approval expires on November 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: December 6, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29931 Filed 12–11–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker license and all associated permits is cancelled with prejudice:

Name	License No.	Issuing port
Gerardo Chavez	20014	San Diego.

Dated: December 6, 2012.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–29913 Filed 12–11–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–90]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Under the Ginnie Mae I program, securities are backed by single-family or multifamily loans. Under the Ginnie Mae II program, securities are only backed by single family loans. Both the Ginnie Mae I and II MBS are modified pass-through securities. The Ginnie Mae II multiple Issuer MBS is structured so that small issuers, who do not meet the minimum number of loans and dollar amount requirements of the Ginnie Mae I MBS, can participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permits the securitization of adjustable rate mortgages (''ARMs''). In order to provide more relevant disclosure information on outstanding Ginnie Mae securities, Ginnie Mae will be collecting additional information on the loans backing securities at issuance. Included in the Guide are the appendices, forms, and documents necessary for Ginnie Mae to properly administer its MBS programs.

DATES: *Comments Due Date:* January 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2503–0033) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; 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 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* 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 Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Approved Number: 2503–0033.

Form number: HUD–11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710A, 1710–B, 1710–C, 11710D, 11710E, 11711–A, 11711–B, 11714, 11714–SN, 11715, 11720, 11732, 11785.

Description of the need for the information and proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Under the Ginnie Mae I program, securities are backed by single-family or multifamily loans. Under the Ginnie Mae II program, securities are only backed by single family loans. Both the Ginnie Mae I and II MBS are modified pass-through securities. The Ginnie Mae II multiple Issuer MBS is structured so that small issuers, who do not meet the minimum number of loans and dollar amount requirements of the Ginnie Mae I MBS, can participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permits the securitization of adjustable rate mortgages (''ARMs''). In order to provide more relevant disclosure information on outstanding Ginnie Mae securities, Ginnie Mae will be collecting additional information on the loans backing securities at issuance. Included in the Guide are the appendices, forms, and documents necessary for Ginnie Mae to properly administer its MBS programs.

While most of the calculations are based on the number of respondents multiplied by the frequency of response, there are several items whose calculations are based on volume.

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	II–1	Letter of Transmittal	210	4	840	0.033	27.7

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11701	I–1	Application for Approval Ginnie Mae Mortgage-Backed Securities Issuer.	100	1	100	1	100.0
11702	I–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	210	1	210	0.08	16.8
11704	II–2	Commitment to Guaranty Mortgage-Backed Securities.	210	4	840	0.033	27.7
11707	III–1	Master Servicing Agreement	210	1	210	0.016	3.4
11709	III–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	210	1	210	0.033	6.9
11715	III–4	Master Custodial Agreement	210	1	210	0.033	6.9
11720	III–3	Master Agreement for Servicer's Escrow Custodial Account.	210	1	210	0.033	6.9
11732	III–22	Custodian's Certification for Construction Securities.	144	1	144	0.016	2.3
	IX–1	Financial Statements and Audit Reports.	210	1	210	1	210.0
		Mortgage Bankers Financial Reporting Form.	350	4	1400	0.5	700.0
11709–A	I–6	ACH Debit Authorization	210	1	210	0.033	6.9
11710 D	VI–5	Issuer's Monthly Summary Reports.	210	12	2520	0.033	83.2
11710A, 1710B, 1710C & 11710E.	VI–12	Issuer's Monthly Accounting Report and Liquidation Schedule.	110	1	110	0.5	55.0
		Data Verification Form	210	2	420	0.05	21.0
	III–13	Electronic Data Interchange System Agreement.	40	1	40	0.166	6.6
	III–14	Enrollment Administrator Signatories for Issuers and Document Custodians.	54	1	54	2	108.0
	I–4	Cross Default Agreement	10	1	10	0.05	0.5
	VI–18	WHFIT Reporting	210	4	840	0.25	210.0
	VI–19	Monthly Pool and Loan Level Report (RFS).	210	12	2520	4.3	10836.0
The burden for the items listed below is based on volume and/or number of requests.							
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	210	12	24800	0.0075	186.0
11706	III–7	Schedule of Pooled Mortgages.	210	12	24800	0.0085	210.8
11708	V–5	Document Release Request	210	1	374	0.05	18.7
	XI–6, XI–8, XI–9.	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	32	4	8000	0.033	1056.0
11711A and 11711B.	III–5	Release of Security Interest and Certification and Agreement.	210	1	24800	0.005	124.0
11714 and 11714SN.	VI–10, VI–11.	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	210	12	56500	0.016	10848.0
	VI–2	Letter for Loan Repurchase	210	12	420	0.033	13.9
	VII–1	Collection of Remaining Principal Balances.	210	12	344000	0.0125	51600.0
	III–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	11	1	11	0.05	0.6
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	56	1	56	0.25	14.0
	VIII–3	Assignment Agreements	63	1	63	0.13	8.2

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
	III–9	Authorization to Accept Facsimile Signed Correction Request Forms.	210	12	128	0.016	2.0
	Total	.....	Varies	495,260	Varies	76,518	

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: December 5, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–29980 Filed 12–11–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–N–14]

Notice of Proposed Information Collection for Public Comment; Emergency Solutions Grant Data Collection

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at: (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Emergency Solutions Grants Program Record Keeping Requirements.

Description of the need for the information proposed: This submission is to request a reinstatement without revisions of an expired information collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the record keeping burden under the ESG entitlement program, formerly titled, Emergency Shelter Grants Program and changed to match the new program name created through the HEARTH Act. To see the regulations for the new ESG program and applicable supplementary documents, visit HUD's Homeless Resource Exchange ESG page at *http://www.hudhre.info/esg/*. The statutory provisions and the implementing interim regulations (also found at 24 CFR 576) that govern the program require these recordkeeping requirements.

Agency Form Numbers:

Members of the affected public: ESG recipient and subrecipient lead persons.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

The ESG record keeping requirements include 18 distinct activities. Each activity requires a different number of respondents ranging from 20 to 78,000. There are 78,000 unique respondents. Each activity also has a unique frequency of response, ranging from once annually to monthly, and a unique associated number of hours of response, ranging from 15 minutes to 12 hours and 45 minutes. The total number of hours needed for all reporting is 367,441 hours.

Status of proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 6, 2012.

Mark Johnston,

Assistant Secretary (Acting).

[FR Doc. 2012–29982 Filed 12–11–12; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meetings; Correction

AGENCY: Inter-American Foundation.

ACTION: Correction.

SUMMARY: This action corrects the order of the **MATTERS TO BE CONSIDERED** and the **PORTIONS TO BE OPEN TO THE PUBLIC** sections of a notice published in the **Federal Register** on

Monday, December 3, 2012 (77 FR 71611).

On page 71611, column 1, in both the MATTERS TO BE CONSIDERED and PORTIONS TO BE OPEN TO THE PUBLIC sections, add ''Remarks from John D. Feeley, Principal Deputy Assistant Secretary for Western Hemisphere Affairs'' after the ''Approval of the Minutes of the September 24, 2012, Meeting of the Board of Directors'' subsections.

CONTACT PERSON FOR MORE INFORMATION:

Paul Zimmerman,

General Counsel.

[FR Doc. 2012–30039 Filed 12–10–12; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Federated Indians of Graton Rancheria—Liquor Control Statute

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Federated Indians of Graton Rancheria—Liquor Control Statute (Ordinance). The Ordinance regulates and controls the sale, consumption and possession of liquor within the Graton Rancheria's Indian country. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within its Indian country and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of December 12, 2012.

FOR FURTHER INFORMATION CONTACT: Sophia Torres, Tribal Government Specialist, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way—Room W–2820, Sacramento, CA 95825; Telephone (916) 978–6073; Fax (916) 978–6099; or De Springer, Office of Indian Services, 1849 C Street NW., MS/4513/MIB, Washington, DC 20240; Telephone (202) 513–7626; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Federated Indians of Graton Rancheria Tribal Council adopted the Liquor Control Statute, by Tribal Council Resolution No. 12–07, on April 13, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council duly adopted the Liquor Control Statute on April 13, 2012.

Dated: November 27, 2012.

Kevin Washburn,

Assistant Secretary, Indian Affairs.

The Federated Indians of Graton Rancheria Liquor Control Statute reads as follows:

Chapter One—Introduction

Section:

1.1 Authority. This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. 1161) and by powers vested in the Tribal Council of the Federated Indians of Graton Rancheria (''Tribal Council'') to enact laws, policies, and regulations as authorized under Article VI, Section 1 of the Constitution of the Federated Indians of Graton Rancheria (the ''Constitution''), adopted December 2002.

1.2 Purpose. The purpose of this Statute is to regulate and control the possession, sale, manufacture and distribution of liquor within Lands Under the Jurisdiction of the Federated Indians of Graton Rancheria (''Tribe''), including the Reservation of the Federated Indians of Graton Rancheria (''Reservation''), in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. Enactment of a liquor control statute will help provide a source of revenue for the continued operation of the tribal government, the delivery of governmental services, and the economic viability of tribal enterprises.

1.3 Short Title. This Statute shall be known and cited as the ''Liquor Control Statute.''

1.4 Jurisdiction. This Statute shall apply to all lands now or in the future under the governmental authority of the Tribe, including, but not limited to, the Reservation and any lands that may be taken into trust for the Tribe.

1.5 Application of 18 U.S.C. 1161. By adopting this Statute, the Tribe hereby regulates the sale, distribution, and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by 18 U.S.C. 1161 and the United States.

1.6 Declaration of Public Policy; Findings. The Tribal Council enacts this Statute, based upon the following findings:

(a) The distribution, possession, consumption and sale of liquor on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) The Tribe is the beneficial owner of the Reservation, upon which the Tribe plans to construct and operate a gaming facility and related entertainment and lodging facilities.

(c) The Tribe's gaming facility will serve as an integral and indispensible part of the Tribe's economy, providing revenue to the Tribe's government and employment to tribal citizens and others in the local community.

(d) Federal law, as codified at 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State law and the duly enacted law of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on Lands under the Tribe's Jurisdiction because of potential problems associated with the unregulated or inadequate regulated sale, possession, distribution, and consumption of liquor.

(f) Regulating the possession, sale, distribution and manufacture of liquor within Lands under the Tribe's Jurisdiction is also consistent with the Tribe's interest in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Lands under the Tribe's Jurisdiction is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on tribal lands and at tribal events.

(h) The purchase, distribution, and sale of liquor on Lands under the Tribe's Jurisdiction shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operating pursuant to a lease with the Tribe, and (iii) tribally-sanctioned events.

(i) The sale or other commercial manufacture or distribution of liquor on Lands under the Tribe's Jurisdiction, other than sales, manufacture, and distributions made in strict compliance with this Statute, is detrimental to the health, safety, and general welfare of the citizens of the Tribe, and is prohibited.

Chapter Two—Definitions

Section:

2.1 Definitions. As used in this Statute, the terms below are defined as follows:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, in any form, and regardless of source or the process used for its production.

(b) *Alcoholic beverage* means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c*) Compact* means the tribal-state Compact between the State of California and the Tribe that governs the conduct of class III gaming activities on the Reservation pursuant to the Indian Gaming Regulatory Act.

(d) *License* means, unless otherwise stated, a license issued by the Tribe in accordance with this Statute.

(e) *Liquor* means any alcoholic beverage, as defined under this Section.

(f) *Person* means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corporation, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(g) *Sale and sell* means the transfer for consideration of any kind, including by exchange or barter.

(h) *State* means the State of California.

(i) *Lands under the Tribe's Jurisdiction* means and includes all lands now or in the future under the governmental authority of the Tribe, including, but not limited to, the Reservation and any lands that may be taken into trust for the Tribe.

(j) *Reservation* means all lands held in trust by the United States for the benefit of the Tribe pursuant to the Graton Rancheria Restoration Act (Pub. L. 106–568, 25 U.S.C. 1300n).

Chapter Three—Liquor Sales, Possession, & Manufacture

Section:

3.1 Possession of Alcohol. The introduction and possession of alcoholic beverages shall be lawful within Lands under the Tribe's Jurisdiction; provided that such introduction or possession is in conformity with the laws of the State.

3.2 Retail Sales of Alcohol. The sale of alcoholic beverages shall be lawful within Lands under the Jurisdiction of the Tribe; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

3.3 Manufacture of Alcohol. The manufacture of beer and wine shall be lawful within Lands under the Jurisdiction of the Tribe, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

3.4 Age Limits. The legal age for possession or consumption of alcohol within Lands under the Jurisdiction of the Tribe shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is any conflict between State law and the terms of the Compact regarding the age limits for alcohol possession or consumption, the age limits in the Compact shall govern for purposes of this Statute.

Chapter Four—Licensing

Section:

4.1 Licensing. The Tribal Council shall have the power to establish procedures and standards for tribal licensing of liquor sales within Lands under the Jurisdiction of the Tribe, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the State. The fact that an applicant for a tribal license possesses a license issued by the State shall not provide the applicant with an entitlement to a tribal license. The Tribal Council may in its discretion set standards which are more, but in no case less, stringent than those of the State.

Chapter Five—Enforcement

Section:

5.1 Enforcement. The Tribal Council shall have the power to develop, enact, promulgate and enforce regulations as necessary for the enforcement of this Statute and to protect the public health, welfare and safety of the Tribe and Lands under the Jurisdiction of the Tribe, provided that all such regulations shall conform to and not be in conflict with any applicable tribal, federal or state law. Regulations enacted pursuant to this Statute may include provisions for suspension or revocation of tribal liquor licenses, reasonable search and seizure provisions, and civil and criminal penalties for violations of this Statute to the full extent permitted by federal law and consistent with due process.

(a) Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Statute by confiscating any liquor sold, possessed, distributed, manufactured or introduced within Lands under the Jurisdiction of the Tribe in violation of this Statute or of any regulations duly adopted pursuant to this Statute.

(b) The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Statute and any procedures or regulations adopted pursuant to this Statute; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Statute; and to delegate to a subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

Chapter Six—Taxes

Section:

6.1 Taxation. Nothing contained in this Statute is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of alcohol. The Tribe retains the right to impose such taxes by appropriate statute to the full extent permitted by federal law.

Chapter Seven—Miscellaneous Provisions

Section:

7.1 Sovereign Immunity Preserved. Nothing contained in this Statute is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its agencies, agents or officials from unconsented suit or action of any kind.

7.2 Conformance with Applicable Laws. All acts and transactions under this Statute shall be in conformity with the Compact and laws of the State to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding alcohol in Indian Country.

7.3 Effective Date. This Statute shall be effective as of the date on which the Secretary of Interior certifies this Statute and publishes the same in the **Federal Register**.

7.4 Repeal of Prior Acts. All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, or statutes pertaining to the subject matter set forth in this Statute are hereby rescinded.

7.5 Amendments. This Statute may only be amended pursuant to an amendment duly enacted by the Tribal Council and certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

7.6 Severability and Savings Clause. If any part or provision of this Statute is held invalid, void, or unenforceable by a court of competent jurisdiction, such adjudication shall not be held to render such provisions inapplicable to other persons or circumstances. Further, the remainder of the Statute shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2012–30003 Filed 12–11–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–YELL–11838; PPWONRADE2, PMP00EI05.YP0000]

Winter Use Plan, Final Environmental Impact Statement Amended Record of Decision, Yellowstone National Park, Idaho, Montana, and Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Amended Record of Decision for the Final Environmental Impact Statement for a Winter Use Plan, Yellowstone National Park.

SUMMARY: Pursuant to Sec. 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Amended Record of Decision for the Winter Use Plan for Yellowstone National Park, located in Idaho, Montana, and Wyoming. On December 3, 2012, the Regional Director, Intermountain Region, approved the Amended Record of Decision for the plan.

The NPS will implement this decision through an implementing regulation that will take effect on December 15, 2012.

FOR FURTHER INFORMATION CONTACT: Wade Vagias, Management Assistant, Yellowstone National Park, 307–344–2035.

SUPPLEMENTARY INFORMATION: The Amended Record of Decision selects Alternative 2 for implementation, for the 2012–2013 winter season only. The NPS will allow oversnow vehicle use in the park for the winter of 2012–2013 at the same levels that were allowed under the interim regulation in place for the winters of 2009–2010, 2010–2011, and 2011–2012. Up to 318 commercially guided, best-available-technology snowmobiles and 78 commercially guided snowcoaches will be allowed in the park per day. All snowmobiles and snowcoaches will be 100 percent commercially guided and Sylvan Pass will remain open under the same conditions as the past three winter seasons.

The Final Environmental Impact Statement analyzed eight alternatives, including a no-action alternative. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Amended Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferred alternative, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

Copies of the Amended Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/yell.*

Dated: December 2, 2012.

John Wessels,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2012–29914 Filed 12–11–12; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–851]

Certain Integrated Circuit Packages Provided with Multiple Heat-Conducting Paths and Products Containing Same; Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Termination of the Investigation Based on Withdrawal of Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') granting complainant's motion for termination of the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 5, 2012, based on a complaint filed by Industrial Technology Research Institute of Hsinchu, Taiwan, and ITRI International of San Jose, California (collectively, ''ITRI''). 77 *FR* 39735 (Jul. 5, 2012). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit packages provided with multiple heat-conducting paths and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,710,459. The complaint, as amended, names LG Electronics, Inc. of Seoul, Republic of Korea, and LG Electronics, U.S.A. of Englewood Cliffs, New Jersey (collectively, ''LG'') as respondents.

Complainants ITRI moved to terminate the investigation in its entirety based on withdrawal of the complaint. Respondents LG did not oppose the motion. On November 8, 2012, the ALJ issued an ID (Order No. 5) granting the motion. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: December 6, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29957 Filed 12–11–12; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Evidence; Federal Register Citation of Previous Announcement: 77 FR 49828

AGENCY: Advisory Committee on Rules of Evidence, Judicial Conference of the United States.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Evidence has been canceled: Evidence Rules Hearing, January 4, 2013, Cambridge, MA.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 7, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–29958 Filed 12–11–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Rules of Criminal Procedure; Federal Register Citation of Previous Announcement: 77 FR 49828

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure has been canceled: Criminal Rules Hearing, January 4, 2013, Cambridge, MA.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 7, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–29959 Filed 12–11–12; 8:45 am]

BILLING CODE 2210–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 11, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit

level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Homeland Security, Transportation Security Administration (N1–560–12–5, 6 items, 6 temporary items). Correspondence, receipts, payments, contract files, and other records relating to procurement.

2. Department of Homeland Security, Transportation Security Administration (N1–560–12–8, 3 items, 3 temporary items). Directives, records related to developing directives, and property accountability records.

3. Department of Homeland Security, Transportation Security Administration (N1–560–12–16, 5 items, 5 temporary items). Records relating to international aviation matters, foreign aviation technical assistance files, background materials relating to international agreements, routine foreign airport assessments, and related records associated with activities involving foreign countries and international air carriers.

4. Department of State, Bureau of Diplomatic Security (DAA–0059–2011–0001, 15 items, 15 temporary items). Records of the Office of Overseas Protective Operations, including incident reports, copies of policy and program files, training activity files, post folders, budget background records, procurement and contract files, and master files of an electronic information system used to track contractor personnel.

5. Department of State, Bureau of Educational and Cultural Affairs (DAA–0059–2012–0009, 3 items, 3 temporary items). Records related to an international professional exchange program, including project files and copies of grant and agreement files.

6. Department of State, Office of Regional Directors (N1–59–11–3, 7 items, 7 temporary items). Records related to office equipment logs, inventories, and reports; responses to regulatory agency information requests; internal surveys of post operations; action and information memorandums; and weekly activity reports.

7. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0003, 1 item, 1 temporary item). Form used to request an exempt or political organizations' tax information.

8. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0004, 1 item, 1 temporary item). Form used to disclose taxpayers' participation in reportable transactions.

9. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0007, 3 items, 3 temporary items). Master files, outputs, and documentation of an electronic information system used to monitor non-banking financial institutions' financial compliance data.

10. Federal Retirement Thrift Investment Board, Office of Enterprise Risk Management (N1–474–12–8, 2 items, 2 temporary items). Records used to monitor the status of audit recommendations.

11. Federal Retirement Thrift Investment Board, Office of Finance (N1–474–12–11, 2 items, 2 temporary items). Monthly reports on budget status.

12. Federal Retirement Thrift Investment Board, Office of Finance (N1–474–12–12, 1 item, 1 temporary item). Annual inspector general act reports submitted to Congress.

13. Medicare Payment Advisory Commission, Agency-wide (N1–148–13–1, 11 items, 6 temporary items). Comprehensive schedule, including correspondence, meeting records, Web site records, publications, and drafts. Proposed for permanent retention are reports to Congress, Congressional testimony, executive correspondence, public meeting records, publications, and comment letters.

14. Peace Corps, Region (N1–490–12–5, 8 items, 8 temporary items). Safety and security records of overseas posts, including volunteer safety manuals and handbooks, safety and security assessments, emergency action plans, and crime case files.

15. U.S. Election Assistance Commission, Agency-wide (N1–585–12–1, 29 items, 19 temporary items). Records include general correspondence, non-significant case files, administrative materials, and working papers. Also includes records related to the Office of Inspector General, such as working audit files, training records, and non-significant investigative files. Proposed for permanent retention are speeches, reports to Congress, significant audit and investigative files, legal opinions, and calendars of senior leadership.

Dated: December 4, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–29955 Filed 12–11–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0135]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on September 5, 2012 (77 FR 54617).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 171, ''Duplication Request.''

3. *Current OMB approval number:* 3150–0066.

4. *The form number if applicable:* NRC Form 171.

5. *How often the collection is required:* On Occasion.

6. *Who will be required or asked to report:* Individuals, companies, or organizations requesting document duplication.

7. *An estimate of the number of annual responses:* 200.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 17.

10. *Abstract:* This form is utilized by the Public Document Room (PDR) staff members who collect information from the public requesting reproduction of publicly available documents in NRC's PDR. Copies of the form are utilized by the reproduction contractor to accompany the orders. One copy of the form is kept by the contractor for their records, one copy is sent to the public requesting the documents, and the third copy (with no credit card data) is kept by the PDR staff for 90 calendar days, and then securely discarded.

The public may examine and have copied for a fee publicly available

documents, including the final supporting statement, at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 11, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0066), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 6th day of December 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–29944 Filed 12–11–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0182]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on August 17, 2012 (77 FR 49834).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

3. *Current OMB approval number:* 3150–0178.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion. Agreement States are requested to provide copies of licensee nuclear material event reports electronically or by hard copy to the NRC within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within 24 hours of notification by an Agreement State licensee.

6. *Who will be required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

7. *An estimate of the number of annual responses:* 471.

8. *The estimated number of annual respondents:* 37.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 745.5 hours.

10. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use, transportation and security of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licenses are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. The NRC is requesting that the Agreement States provide information to NRC on the initial notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

The public may examine and have copied for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 11, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0178), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov,* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 5th day of December 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–29943 Filed 12–11–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133; NRC–2012–0288]

Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit 3; Schedular Exemption From Final Rule for Enhancements to Emergency Preparedness Regulations

1.0 Background

On July 2, 1976, Humboldt Bay Power Plant (HBPP) Unit 3 was shut down for annual refueling and to conduct seismic modifications. The unit was never

restarted. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, Pacific Gas and Electric Company (PG&E) announced its intention to decommission the unit. On July 16, 1985, the U.S. Nuclear Regulatory Commission (NRC) issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate. (Agencywide Documents Access and Management System Accession No. 8507260045). In December of 2008, the transfer of spent fuel from the fuel storage pool to the dry-cask Independent Spent Fuel Storage Installation (ISFSI) was completed, and the decontamination and dismantlement phase of HBPP Unit 3 decommissioning commenced. Active decommissioning is currently underway.

2.0 Request/Action

The NRC issued the Final Rule for Enhancements to Emergency Preparedness Regulations (Final Rule) in the **Federal Register** on November 23, 2011 (76 FR 72560). Certain portions of the Final Rule are required to be implemented by June 20, 2012, while other portions of the Final Rule have later implementation dates.

By letter dated June 19, 2012 (ADAMS Accession No. ML12187A235), Pacific Gas and Electric Company (PG&E, the licensee) requested a schedular exemption which would extend the date for implementing certain sections of the Final Rule from June 20, 2012, to September 20, 2012. The specific sections are:

For Security-Related Emergency Plan Issues:
- Emergency Action Levels for Hostile Action (10 CFR Part 50, Appendix E, IV.B)
- Emergency Response Organization Augmentation at Alternate Facility—capability for staging emergency organization personnel at an alternate facility and the capability for communications with the control room and plant security (10 CFR Part 50, Appendix E, IV.E.8.d)
- Protection for Onsite Personnel (10 CFR Part 50, Appendix E, IV.I)

For Non-Security Related Issues:
- Emergency Declaration Timeliness (10 CFR Part 50, Appendix E, IV.C.2.)
- Emergency Operations Facility—Performance Based Approach (10 CFR Part 50, Appendix E, IV.E.8.a.–c.)

PG&E asserts that the Final Rule does not specifically address defueled, non-operating facilities such as HBPP, the Final Rule is not applicable to 10 CFR Part 72 ISFSI emergency plans, and therefore PG&E needs more time to evaluate the impact of the Final Rule on HBPP.

3.0 Discussion

Through the Final Rule which became effective December 23, 2011, the NRC amended certain emergency preparedness (EP) requirements that apply to certain 10 CFR Parts 50 and Part 52 licensees and applicants. The Final Rule codified certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events'' (BL–05–02) dated February 25, 2002, and generically applicable requirements similar to those previously imposed by Commission orders, in particular EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' dated February 25, 2002. In addition, the Final Rule amended other licensee emergency plan requirements based on a comprehensive review of the NRC's EP regulations and guidance. The requirements enhance the ability of licensees in preparing to take and taking certain EP and protective measures in the event of a radiological emergency; address, in part, security issues identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent emergency plan implementation among licensees; and modify certain EP requirements to be more effective and efficient.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

This exemption would, as noted above, allow the licensee to defer compliance with portions of the new EP rule contained in 10 CFR part 50, from June 20, 2012, until September 20, 2012. The Atomic Energy Act of 1954, as amended and the Commission's regulations permit the Commission to grant exemptions from the regulations in 10 CFR part 50. Granting exemptions is consistent with the authority provided to the Commission in the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

The Final Rule incorporated several security-related emergency planning improvements that had previously been issued by Order EA–02–026 or BL–05–02. EA–02–026 was sent only to operating power reactor licensees, and B–05–02 was sent only to holders of operating licenses for nuclear power reactors, except for those licensees who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel. Although both the Order and Bulletin were not applicable to nuclear power reactor facilities that have permanently shutdown, such as Humboldt Bay, all aspects of the Final Rule are applicable to these licensees.

The staff determined that Humboldt Bay's EP program met the baseline requirements of the previous version of the EP requirements in 10 CFR 50.47, and 10 CFR part 50, Appendix E as previously approved by the NRC in the Decommissioning Safety Evaluation Report dated April 27, 1987. The EP Final Rule was not necessary for adequate protection. The **Federal Register** notice for the Final Rule stated, ''the Commission has determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security.'' Thus, compliance with the EP requirements in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection, and granting an extension of time to comply with portions of the EP Final Rule will not present an undue risk to public health or safety and is consistent with the common defense and security.

The Humboldt Bay Site Emergency Plan is a joint emergency plan addressing both the 10 CFR part 50 licensed facility and the 10 CFR part 72 licensed ISFSI. The Emergency Plan does not include PG&E-staffed offsite facilities or an onsite Technical Support Center. As stated in Section 2.0 above, the licensee has stated that the Final Rule does not specifically address defueled, non-operating facilities such as HBPP, it is not applicable to 10 CFR part 72 ISFSI emergency plans, and therefore PG&E is still evaluating the applicability of the Final Rule to HBPP. Because PG&E is still evaluating the applicability of the Final Rule to HBPP, special circumstances are present in that the licensee reasonably needs more time to assess the impact of the rule.

4.0 Conclusion

The NRC staff reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to five specific requirements of 10 CFR 50.47, and Part 50, Appendix E until September 20, 2012.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, ''Specific exemptions,'' an exemption from the June 20, 2012, compliance date is authorized by law and will not endanger life or property or the common defense and security, is otherwise in the public interest, and special circumstances are present. Therefore, the Commission hereby grants the requested exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the June 20, 2012, deadline for the five sections specified in the licensee's letter dated June 19, 2012, the licensee is required to be in compliance with 10 CFR part 50, Appendix E, IV.B, 10 CFR part 50, Appendix E, IV.E, 10 CFR part 50, Appendix E, IV.I, 10 CFR part 50, Appendix E, IV.C, and 10 CFR part 50, Appendix E, IV.E.8, or request appropriate exemption by September 20, 2012.

Pursuant to 10 CFR 51.32, ''Finding of no significant impact,'' the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (77 FR 71198; November 29, 2012).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of December 2012.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. 2012–29950 Filed 12–11–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2013–5; Order No.1569]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning modification of a mail contract with Singapore Post Limited. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

Background. On December 4, 2012, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.,* announcing that it has entered into a modification of an existing bilateral agreement (Modified Agreement) for inbound market dominant services with Singapore Post Limited (Singapore Post).[1] It asks that the Commission include the Modified Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Contract history and scope. The Modified Agreement revises the existing Singapore Post Agreement (Original Agreement), filed in Docket No. R2012–1, which was included within Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 by operation of Order No. 995. *Id.* at 1. The modification extends the Original Agreement until June 30, 2013. *Id.*

Applicable rules. Subpart D of 39 CFR 3010 addresses rate adjustments for negotiated service agreements (Type 2 adjustments). The rules in this subpart specify, among other things, the scope and nature of the data, information, and explanations the Postal Service is to provide in a notice of Type 2 rate adjustment; the action the Commission is to take upon receipt of such Notice; and the nature of Commission review. *See* 39 CFR 3010.42 through 3010.44.

II. Notice of Filing

Compliance with filing requirements. The Postal Service's filing consists of the Notice, three attachments, and a public Excel file. Attachment 1 to the Notice is an application for non-public treatment of material filed under seal with the Commission (Application).[2] This material consists of the unredacted text of the Agreement and unredacted supporting financial documentation. *Id.* at 3. Attachment 2 is a copy of the Modified Agreement. *Id.* at 2. Attachment 3 is a redacted copy of the Original Agreement from Docket No. R2012–1. *Id.* at 2–3. The public Excel file is a redacted version of the supporting financial documentation. *Id.* at 3.

The Postal Service identifies January 18, 2013 as the effective date of the Modified Agreement; asserts that the requisite 45 days' advance notice is being provided; and identifies a Postal Service official as a contact for further information. *Id.* at 3–4.[3] It identifies the parties to the Agreement as the United States Postal Service and Singapore Post Limited, the postal operator for Singapore. *Id.* at 4. It states that the Modified Agreement includes delivery confirmation scanning for Letter Post small packets, a service established by the China Post 2010 Agreement, the Hongkong Post Agreement, and China Post 2011 Agreements. *Id.*

The Postal Service states that information about expected financial improvements, costs, volumes, and revenues in financial workpapers has been filed with the Commission under seal. *Id.* at 5. Because the Modified Agreement involves only term extension, and therefore no relevant material change, the Postal Service incorporates by reference portions of its original notice[4] (in Docket No. R2012–1), addressing, as required by 39 CFR 2010.41(d), components expected to enhance performance and, as required by 39 CFR 2010.41(e), reasons why the Modified Agreement will not result in unreasonable harm to the marketplace. Notice at 5.

Rule 3010.43—data collection plan. Rule 3010.43 requires the Postal Service to submit a detailed data collection plan. The Postal Service asks that the Commission except the Modified Agreement from the separate performance reporting requirement under 39 CFR 3055.3(a)(3), based on reasons described in the Docket No. R2012–1 Notice. *Id.* at 6; *see also* Docket No. R2012–1 Notice at 5–6.

Consistency with applicable statutory criteria. The Postal Service notes that in the Original Agreement, the Commission held that the criteria set forth in 39 U.S.C. 3622(c)(10) had been

[1] Notice of the United States Postal Service of Filing Additional Functionally Equivalent Agreement, December 4, 2012 (Notice).

[2] The Application was filed pursuant to 39 CFR 3007.21. *See Id.* at 7.

[3] In a related filing in Docket No. R2012–1, the Postal Service seeks a brief extension of the Original Agreement. *See* Docket No. R2012–1, Motion of the United States Postal Service for Temporary Relief, December 4, 2012.

[4] Docket No. R2012–1, Notice of United States Postal Service of Type 2 Rate Adjustment and Notice of Filing Functionally Equivalent Agreement, October 14, 2011, at 4–7 (Docket No. R2012–1 Notice).

met. t asserts that because the Modified Agreement does not materially change any relevant terms of the Original Agreement, the statutory criteria continue to be met. Notice at 6.

Similarly, the Postal Service asserts the Modified Agreement does not materially change any relevant terms of the Original Agreement and should therefore be deemed functionally equivalent. *Id.* at 7.

III. Notice of Proceeding

The Commission, in conformance with rule 3010.44, hereby establishes Docket No. R2013–5 to consider issues raised by the Notice. The Commission invites public comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than December 17, 2012.[5]

The public portions of the Postal Service's filing have been posted on the Commission's Web site. They can be accessed at *http://www.prc.gov.* Information on how to obtain access to non-public material is available at 39 CFR 3007.40.

The Commission appoints Allison J. Levy to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2013–5 to consider matters raised by the Notice of United States Postal Service of Filing Additional Functionally Equivalent Agreement, filed December 4, 2012.

2. Pursuant to 39 U.S.C. 505, Allison J. Levy is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than December 17, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–29936 Filed 12–11–12; 8:45 am]

BILLING CODE 7710–FW–P

[5] To provide sufficient time for interested persons to comment in these proceedings, the Commission finds it appropriate to waive the 10-day comment period specified in 39 CFR 3010.44(a)(5). The modest extension will not prejudice either party to the agreement, given that 45 days' advance notice is provided.

POSTAL REGULATORY COMMISSION

[Docket No. R2012–5; Order No. 1568]

Standard Mail Pricing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to an existing negotiated service agreement with Canada Post Corporation. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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IV. Ordering Paragraphs

I. Introduction

On November 29, 2012, the Postal Service filed a notice informing the Commission of a development related to an amendment to an existing bilateral agreement with Canada Post Corporation (Notice).[1] The development involves the Postal Service's receipt of notification, from Canada Post Corporation, of an anticipated product launch date of January 14, 2013 for a certain inbound product. Notice at 1. Offering of the inbound product had been agreed to as one of several initiatives, but the launch date had not been determined at the time the amendment was executed.[2] *Id.*

The Postal Service asks that the Commission take note of the referenced amendment and of updated financial models demonstrating that the agreement continues to comport with 39 U.S.C. 3622(c)(10). *Id.* at 3.

II. Contents of Filing

The Postal Service's filing consists of the Notice, two attachments, and a public Excel file. Attachment 1 is an application for non-public treatment of material filed under seal, which consists of the unredacted amendment to the contract and supporting financial documentation. *Id.* at 1. Attachment 2 is a redacted version of the material filed under seal. *Id.* at 1–2. The public Excel file contains redacted financial documentation. *Id.* at 2.

III. Notice of Filing and Related Proceeding

The Commission hereby informs the public of the Postal Service's Notice and of the reopening of Docket No. R2012–5 for the limited purpose of considering issues raised by the Notice (the continued consistency of the underlying agreement with 39 U.S.C. 3622(c)(10)). Interested persons may submit comments no later than December 17, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to sealed material appears in 39 CFR part 3007. The Commission appoints James F. Callow to serve as Public Representative in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. R2012–5 for the limited purpose of considering matters raised by the amendment addressed in the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public for this aspect of this docket.

3. Comments by interested persons in these proceedings are due no later than December 17, 2012.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–29907 Filed 12–11–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Agreement, November 29, 2012 (Notice). The Agreement was approved in Order No. 1078, Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, December 27, 2011.

[2] The Notice states that the amendment was previously filed with both the Commission and the Department of State. *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68377; File No. SR–NYSE–2012–72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Manner in Which New York Stock Exchange LLC Calculates Certain Volume, Liquidity and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Systems Issue Experienced by the Exchange on November 12, 2012

December 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 30, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the manner in which it calculates certain volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the Exchange on November 12, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify the manner in which it calculates certain volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the Exchange on November 12, 2012 shortly after the opening of trading, which affected one of its matching engines handling trading for 216 securities (the ''systems issue'').[3] The Exchange halted trading in these 216 symbols and did not resume trading in the 216 affected symbols on November 12, 2012.

The halting of trading in the 216 securities affected by the systems issue resulted in a significant decrease in trading volume on the Exchange on November 12, 2012, not only for the 216 securities impacted by the systems issue, but also across a majority of the securities trading on the Exchange. It also affected the ability of member organizations on the Exchange, including Designated Market Makers (''DMMs''), Supplemental Liquidity Providers (''SLPs'') and Retail Liquidity Providers (''RLPs''), to demonstrate typical trading, quoting and liquidity in such securities.

As provided in the Exchange's Price List, several of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that member organizations must satisfy in order to qualify for the particular rates. The Exchange believes that the halting of trading that resulted from the systems issue may affect the ability of member organizations to meet certain of these thresholds during November 2012.[4] Accordingly, the Exchange proposes to exclude November 12, 2012 from such calculations, in order to reasonably ensure that a member organization that would otherwise qualify for a particular threshold during November 2012, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of the securities.

First, for all securities traded on the Exchange, the Exchange proposes to exclude November 12, 2012 for purposes of determining transaction fees and credits that are based on average daily volume (''ADV'') during the billing month, either directly or as a percentage of consolidated average daily volume in NYSE-listed securities (''NYSE CADV'') or of September 2012 Adding ADV (''SLP Baseline ADV''). If the Exchange did not exclude November 12, 2012 when calculating ADV for November, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculation (*e.g.,* trading volume) would be correspondingly lower, but the denominator for the threshold calculations (*e.g.,* the number of trading days) would not be decreased. The impacted billing rates in the Price List are as follows:

- The threshold for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders of an ADV of 0.375% of NYSE CADV that relates to the fee of $0.00055 per share;
- The thresholds of ADV of 1.5%, 0.375%, 0.8%, 0.12%, 0.15%, 0.5%, 0.12% and 15% of NYSE CADV that relate to the credit of $0.0018 per share;
- The thresholds of ADV of 0.20% and 0.10% of NYSE CADV that relate to the credit of $0.0017 per share;
- The threshold of ADV of 0.22% of NYSE CADV that relates to the SLP credit of $0.0023 (or $0.0018 if a Non-Displayed Reserve Order) per share;
- The thresholds of ADV of 0.22% of NYSE CADV and 0.18% of SLP Baseline ADV, as well as the minimum provide ADV of 12 million shares that relate to the SLP credit of $0.0025 per share;
- The threshold of ADV of 0.22% of NYSE CADV that relates to the SLP credit of $0.0005 per share; and
- The 500,000-share ADV threshold that relates to the non-Retail Liquidity Provider (''RLP'') member organization rate of $0.00.

Second, for the 216 securities impacted by the systems issue, the Exchange proposes to exclude November 12, 2012 for purposes of determining transaction fees and credits that are based on quoting and/or liquidity levels of DMMs, SLPs and RLPs. The calculations of such quoting and liquidity levels include the amount of time that the relevant DMM, SLP or RLP quoted at the National Best Bid or Offer (''NBBO'').[5] If the Exchange did not exclude November 12, 2012 when calculating the quoting or liquidity levels for November, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculation (*e.g.,* time during which the DMM, SLP or RLP quoted at the NBBO) would be lower, but the denominator (*e.g.,* total time that the U.S. equity

[3] The systems issue was limited to the Exchange's market and did not impact the markets of its affiliates NYSE MKT LLC and NYSE Arca, Inc.

[4] The Exchange notes that it does not perform the calculations necessary to determine whether these thresholds have been met until after the particular billing month has ended.

[5] *See* Rules 107B(g) and 107C(f).

markets quote during regular trading hours) would not be decreased. The impacted billing rates in the Price List are as follows:

- For DMMs, (1) the 10% ''More Active Securities Quoting Requirement'' that relates to the rebates of $0.0025, $0.0026, $0.0030, $0.0029 and $0.0015, respectively, per share; and (2) the 15% ''Less Active Securities Quoting Requirement'' that relates to the rebates of $0.0035 and $0.0015, respectively, per share;
- For SLPs, the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B that relates to the credits of $0.0023 (or $0.0018 if a Non-Displayed Reserve Order) and $0.0025, respectively, per share; and
- For RLPs, the applicable percentage requirement of Rule 107C that relates to the fees of $0.00 and $0.0003, respectively, per share.

The Exchange notes that the proposed exclusions would be similar to the current provision in the Price List whereby, for purposes of transaction fees and SLP credits, ADV calculations exclude early closing days.[6] Generally, this applies to certain days before or after a holiday observed by the Exchange.[7]

Finally, the Exchange does not propose to exclude November 12, 2012 for purposes of the DMM thresholds in the Price List that are based solely on consolidated ADV (''CADV''), quoted size or intraday adding liquidity.[8] The thresholds that are based solely on CADV consider volume across all markets, not only the Exchange's, and, unlike the transaction fees and credits discussed above that are based on ADV during the billing month as a percentage of NYSE CADV or SLP Baseline ADV, the DMM thresholds based solely on CADV do not take CADV as a percentage of another metric. Therefore the systems issue and the resulting halting of securities on the Exchange would not necessarily have had a significant impact on CADV for these securities. This is also true for the thresholds that are based on quoted size or intraday adding liquidity because, while the numerator of the related threshold calculation (*e.g.,* the DMM's quoted size or DMM intraday adding liquidity) may have decreased because of the systems issue and the resulting trading halts, so too would the denominator of the related threshold calculation (*e.g.,* the NYSE quoted size or NYSE total intraday adding liquidity). These billing rates in the Price List, for which the Exchange is *not* excluding activity on November 12, 2012 for purposes of determining transaction fees and credits, are as follows:

- The ADV threshold of 1,000,000 shares or more that determines ''More Active Securities'' and that relates to the rebates of $0.0025, $0.0026, $0.0030, $0.0029, $0.0015 and $0.0004, respectively, per share;
- The ADV threshold of less than 1,000,000 shares that determines ''Less Active Securities'' and that relates to the rebates of $0.0035, $0.0015 and $0.0004, respectively, per share;
- The ''More Active Securities Quoted Size Ratio Requirement'' that relates to the rebates of $0.0026, $0.0030 and $0.0029, respectively, per share;[9] and
- The 15% and 30% thresholds of NYSE total intraday adding liquidity in each security that relate to the rebates of $0.0026, $0.0030 and $0.0029 per share.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding billing for activity on the Exchange and the Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Specifically, the Exchange believes that excluding November 12, 2012 for all securities traded on the Exchange for purposes of determining transaction fees and credits that are based on ADV during the billing month, either directly or as a percentage of NYSE CADV or of SLP Baseline ADV, is reasonable because the halting of trading in the 216 securities impacted by the systems issue resulted in a significant decrease in trading volume on the Exchange on November 12, 2012, not only for the 216 securities impacted by the systems issue, but also across a majority of the securities trading on the Exchange. This is reasonable because, without this exclusion, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculations of ADV (*e.g.,* trading volume) would be correspondingly lower, but the denominator for the calculations (*e.g.,* the number of trading days) would not be decreased. The Exchange believes that excluding activity on November 12, 2012 for purposes of determining transaction fees and credits that are based on ADV during the billing month is equitable and not unfairly discriminatory because, in addition to applying equally to all market participants on the Exchange, it will apply to all securities traded on the Exchange, including the 216 securities impacted by the systems issue. In this regard, excluding November 12, 2012 from such ADV calculations is equitable and not unfairly discriminatory because the exclusion would reasonably ensure that a member organization that would otherwise qualify for a particular threshold for November 2012, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of securities. As noted above, the impact of the systems issue on trading volume on the Exchange was not isolated to the 216 securities, but also affected a majority of the securities trading on the Exchange.

The Exchange also believes that excluding November 12, 2012 for the 216 securities impacted by the systems issue for purposes of determining transaction fees and credits that are based on quoting and/or liquidity levels of DMMs, SLPs and RLPs is reasonable because, unlike general order flow that is sent to the Exchange, DMM, SLP and RLP activity is typically specific to particular securities. The calculations of such quoting and liquidity levels include the amount of time that the relevant DMM, SLP or RLP quoted at the NBBO. In this regard, excluding November 12, 2012 from these quoting and liquidity calculations is reasonable because, without this exclusion, as a result of the decreased trading volume on November 12, 2012, the numerator for the calculations (*e.g.,* time during which the DMM, SLP or RLP quoted at the NBBO) would be lower, but the denominator for the threshold calculations (*e.g.,* total time that the U.S. equity markets quote during regular trading hours) would not be decreased. As a result, without this exclusion, a member organization that would

[6] *See* footnote 4 in the Price List.

[7] For example, the Exchange is closed on Thanksgiving Day and closes early on the Friday immediately following Thanksgiving Day (*e.g.,* Friday, November 23, 2012).

[8] CADV includes all volume reported to the Consolidated Tape Association Plan for Tapes A, B and C securities.

[9] *See* footnote 7 in the Price List.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

otherwise qualify for a particular threshold for November 2012, and the corresponding transaction rate may be negatively impacted by the systems issue. This is equitable and not unfairly discriminatory because DMMs, SLPs and RLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

Finally, the Exchange believes that not excluding activity on November 12, 2012 for purposes of determining transaction fees and credits related to the DMM thresholds in the Price List that are based solely on CADV and quoted size is reasonable. This is because the thresholds that are based solely on CADV consider volume across all markets, not only the Exchange's, and, unlike the transaction fees and credits discussed above that are based on ADV during the billing month as a percentage of NYSE CADV or SLP Baseline ADV, the DMM thresholds based solely on CADV do not take CADV as a percentage of another metric. Therefore the systems issue and the resulting halting of securities on the Exchange would not necessarily have had a significant impact on CADV for these securities. This is also true for the thresholds that are based on quoted size or intraday adding liquidity because, while the numerator of the related threshold calculation (*e.g.,* the DMM's quoted size or DMM intraday adding liquidity) may have decreased because of the systems issue and the resulting trading halts, so too would the denominator of the related threshold calculation (*e.g.,* the NYSE quoted size or NYSE intraday adding liquidity). This is equitable and not unfairly discriminatory because, in addition to applying to all DMMs on the Exchange, the Exchange believes that the systems issue did not have a significant impact on these thresholds and, therefore, including activity on November 12, 2012 will have an equal impact for all DMMs.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,[12] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed exclusions would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during the month, and the corresponding transaction rate, would not be negatively impacted by the systems issue and the resulting halting of securities. In particular, the Exchange believes that the proposed exclusions promote just and equitable principles of trade because they account for the impact on trading volume, liquidity and quoting that resulted from the systems issue, for the 216 securities impacted by the systems issue and, more broadly, for all securities traded on the Exchange. The Exchange further believes that the proposed exclusions remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide transparency for member organizations and the public regarding the manner in which the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange on November 12, 2012 and for the month of November 2012. In this regard, the Exchange believes that the proposed exclusions are consistent with the Act because they address inquiries from member organizations regarding how the Exchange will treat November 12, 2012 for purposes of billing. Also, the proposed exclusions are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, but are instead designed to provide transparency for all member organizations and the public regarding the manner in which the Exchange will calculate certain volume, liquidity and quoting thresholds in relation to the systems issue. The Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will allow the Exchange to immediately implement the proposed change, thereby reducing the potential for confusion among member organizations and the public regarding how the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange during November 2012 and, more specifically, on November 12, 2012. The Commission believes that the requested waiver will also assist the Exchange in determining transaction fees and credits for member organizations in a timely manner after the end of the billing month of November 2012. Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2012–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–72 and should be submitted on or before January 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29966 Filed 12–11–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68375; File No. SR–Phlx–2012–135]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

December 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on November 30, 2012 NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Singly Listed Options [3] Transaction Charges in Section III of the Pricing Schedule.[4] The Exchange is also proposing a technical amendment to its Pricing Schedule. While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on December 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section III of the Exchange's Pricing Schedule to increase various options transaction charges in Singly Listed Options in order to recoup increased costs associated with Singly Listed Options as compared to Multiply Listed Options.[5]

Today, the Exchange assesses Customers, Specialists [6] and Market Makers [7] a $0.35 per contract options transaction charge for Singly Listed Options. The Customer fee will remain unchanged. The Specialist and Market Maker fees will be increased to $0.40 per contract in Singly Listed Options. Today, the Exchange assesses Professionals,[8] Firms and Broker-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

[4] Currently, Singly Listed Options include options overlying currencies, equities, ETFs, ETNs, indexes and HOLDRs not listed on another exchange. The following symbols are also assessed the fees in Section III for Singly Listed Options: SOX, HGX and OSX. The Exchange receives an overnight file from The Options Clearing Corporation, the Data Distribution Service feed, which provides the Exchange a list of options which are Singly and Multiply Listed. The Exchange provides its members with a symbol directory that indicates whether a security is Singly or Multiply Listed. This information, which is available on the exchange's Web site, is updated daily. In the event that a Singly Listed Option becomes Multiply Listed, the option would be assessed the fees in Section II of the Pricing Schedule.

[5] Multiply Listed Options overlying equities, ETFs, ETNs, indexes as well as BKX, RUT, MNX and NDX would continue to be subject to the fees in Section II of the Pricing Schedule. For purposes of this filing, a Multiply Listed Option means an option that is listed on more than one exchange.

[6] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[7] A ''Market Maker'' includes Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii)), which include Streaming Quote Traders (''SQTs'') (*See* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (''RSQTs'') (*See* Rule 1014(b)(ii)(B)).

[8] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month

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Dealers a $0.45 per contract options transaction charge in Singly Listed Options. These fees will be increased to $0.60 per contract.

The Exchange is not proposing to amend other transaction fees in Section III of the Pricing Schedule. Also, the Exchange proposes to eliminate the term ''HOLDRs'' from its Pricing Schedule as this product is no longer traded on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that increasing the Professional, Specialist, Market Maker, Firm and Broker-Dealer options transaction charges is reasonable because the Exchange is seeking to recoup the operational costs for Singly Listed Options, which costs are higher than those for Multiply Listed Options.[11] Also, the Exchange believes the fees are reasonable because the proposed fees are within the range of similar fees assessed at other exchanges.[12]

The Exchange believes that increasing the Professional, Specialist, Market Maker, Firm and Broker-Dealer options transaction charges is equitable and not unfairly discriminatory because the pricing will be comparable among similar categories of market participants, as is the case today. Professionals, Firms and Broker-Dealers, will all be assessed the same rates ($0.60 per contract) and Customers, Specialists and Market Makers will continue to be assessed lower rates as compared to other market participants. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in Singly Listed Options benefits all market participants through increased liquidity. The Exchange notes that Specialists and Market Makers are assessed lower options transaction charges as compared to other market participants, except Customers, because they have burdensome quoting obligations[13] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The proposed differentiation as between Customers, Specialists and Market Makers as compared to Professionals, Firms and Broker-Dealers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange believes that removing the term ''HOLDRs'' from the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the product is no longer traded on the Exchange and for clarity the term is being removed.

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. The Exchange believes its fees for Singly Listed Options products remain competitive with other fees at other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–2012–135 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–2012–135. 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–

for its own beneficial account(s). *See* Rule 1000(b)(14).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a Multiply Listed Option as compared to a Singly Listed Option, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

[12] Chicago Board Options Exchange, Incorporated (''CBOE'') assesses an $0.80 per contract fee to Customers, Broker-Dealers, Non-Trading Permit Holder Market Makers and Professional and Voluntary Professional market participants for SPX Range Options (SRO) transactions, a proprietary index, in addition to a surcharge fee. SPX refers to options on the Standard & Poor's 500 Index. *See* CBOE's Fees Schedule. In addition, NASDAQ Options Market LLC (''NOM'') assesses Non-Penny Pilot Fees for Removing Liquidity ranging from $0.82 to $0.89 per contract depending on the market participant. See Chapter XV, Section 2. of NOM's Rules. The Exchange also assess a Broker-Dealer an electronic options transaction charge (non-Penny Pilot) of $0.60 per contract for transactions in Multiply Listed Options. *See* Section II of the Exchange's Pricing Schedule.

[13] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

2012–135 and should be submitted on or before January 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29964 Filed 12–11–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68376; File No. SR–Phlx–2012–139]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders

December 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on December 3, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I, Part B of the Exchange's Pricing Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' to apply a fee differential approved by the Commission.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed two immediately effective rule changes, SR–Phlx–2012–27 and SR–Phlx–2012–54,[3] to amend certain fees and rebates in Section I, which filings were temporarily suspended by the Commission as of April 30, 2012 (''Suspension Order'').[4] On November 9, 2012, the Commission approved SR–Phlx–2012–27 and SR–Phlx–2012–54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (''Approval Order'').[5]

The Approval Order approved certain fees that were proposed by the Exchange in SR–Phlx–2012–27.[6] The Exchange proposes, pursuant to the Approval Order, to reinstate the Complex Order pricing differential that was suspended on April 30, 2012. In SR–Phlx–2012–27, the Exchange filed to amend various fees.[7] The fees for execution of Complex Orders by Directed Participants and Market Makers became the subject of the Suspension Order. Specifically, the Exchange filed to amend the Directed Participant Complex Order Fee for Removing Liquidity from $0.30 to $0.32 per contract and the Marker Maker Complex Order Fee for Removing Liquidity from $0.32 to $0.37 per contract.[8] On April 30, 2012, the Commission suspended both SR–Phlx–2012–27 and a related filing SR–Phlx–2012–54 and instituted proceedings to determine whether the Exchange's proposed rule changes should be approved or disapproved.[9] The proposed $0.05 per contract Complex Order differential as between Directed Participants and Market Makers was suspended and the $0.02 fee differential was reinstated as of April 30, 2012.[10] The subsequent Approval Order approved the fees related to Complex Orders on a one-year pilot basis operative on December 3, 2012.[11] Since the date of the Suspension Order, the Exchange has filed amendments to Section I of its Pricing Schedule which amended certain fees and also the categories of market participants.[12]

The Exchange amended its categories of market participants to specifically define a Specialist [13] separate and apart from other Market Makers.[14] At the time of the Suspension Order, the Exchange defined a Market Maker to include Specialists and Registered Options Traders.[15] The Exchange redefined a

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27) and 66883 (April 30, 2012), 77 FR 26591 (May 4, 2012) (SR–Phlx–2012–54).

[4] By order dated April 30, 2012, the Commission suspended SR–Phlx–2012–27 and SR–Phlx–2012–54. *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR–Phlx–2012–27and SR–Phlx–2012–54).

[5] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[6] Specifically, SR–Phlx–2012–27 proposed, among other things, to: (1) Increase the Customer Complex Order Rebate for Adding Liquidity from $0.30 to $0.32 per contract, (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a $0.06 Complex Order Rebate for Removing Liquidity, and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.35 per contract to $0.38 per contract.

[7] *See* Securities Exchange Act Release No. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27).

[8] *Id.*

[9] The Commission noted in the Suspension Order that it ''* * * believes it is appropriate to further evaluate the potential effect of the proposed rule changes on competition among different types of market participants and on market quality, particularly with respect to the fee differential between Directed Participants and Market Makers, and the basis for such differential put forth by the Exchange.'' *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595, 26596 (May 4, 2012) (SR–Phlx–2012–27and SR–Phlx–2012–54).

[10] By order dated April 30, 2012, the Commission suspended SR–Phlx–2012–27 and SR–Phlx–2012–54. *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[11] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[12] *See* Securities Exchange Act Release Nos. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR–Phlx–2012–77) (an immediately effective rule filing which, among other things, amended the Complex Order Directed Participant fee from $0.34 to $0.36 per contract and noted that the Complex Order fee for Removing Liquidity, applicable to Specialists and Market Makers, will be decreased by $0.02 per contract when the Specialist or Market Maker transacts against a Customer order directed to them. This filing also established the category of Specialist); and 67633 (August 9, 2012), 77 FR 49040 (August 15, 2012) (SR–Phlx–2012–104) (an immediately effective rule filing, which, among other things, amended the Complex Order Specialist and Market Maker fees from $0.36 to $0.39 per contract).

[13] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[14] *See* Securities Exchange Act Release No. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR–Phlx–2012–77).

[15] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the

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Market Maker to include ROTs, SQTs and RSQTs. The Exchange eliminated the category ''Directed Participant'' [16] from the categories of market participants, and instead added Specialists as a category of market participants.[17]

The Exchange is therefore proposing to amend the Pricing Schedule to reflect the $0.05 fee differential between Market Makers and Specialists that execute directed Complex Orders and those that do not that was proposed in SR–Phlx–2012–27 and SR–Phlx–2012–54. The Exchange also proposes to state in the Pricing Schedule that the fee differential is subject to a one-year pilot. The Exchange proposes these amendments become operative on December 3, 2012 consistent with the Approval Order.[18]

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(4) of the Act [20] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

On November 9, 2012, the Commission approved SR–Phlx–2012–27 and SR–Phlx–2012–54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (''Approval Order'').[21] Pursuant to that Approval Order and the reasons articulated therein, the Exchange is modifying its Pricing Schedule to reflect the $0.05 per contract Complex Order fee differential that was proposed in SR–Phlx–2012–27 and SR–Phlx–2012–54 and approved. This filing incorporates the $0.05 per contract Complex Order fee differential that was recently approved by the Commission.[22]

This proposal does not amend the current pricing in Section I, Part B of the Pricing Schedule other than to offer discounted pricing to Market Makers and Specialists when the Market Maker or Specialist transacts against a Customer Order directed to them by increasing the Complex Order Fee for Removing Liquidity discount from $0.02 to $0.05 per contract, consistent with the Approval Order.[23]

The Exchange believes that the proposed amendments are consistent with the Act because the proposal merely incorporates amendments approved by the Commission pursuant to an Approval Order.[24]

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. Further, the Exchange notes that the Market Maker and Specialists Complex Order Fees for Removing Liquidity currently in place at the Exchange apply only to certain Select Symbols which are Multiply-Listed and highly liquid securities. As described herein, the Exchange's fees are comparable to and lower than other fee differentials today at other options exchanges. Given the highly competitive environment for options trading and the attendant benefits to investors, the Exchange believes that no exchange has market power sufficient to raise prices for competitively-traded options in an unreasonable or unfairly discriminatory manner in violation of the Exchange Act. In actuality, it is member firms that control the order flow that options markets compete to attract as evidenced by the large number of pricing-related rule changes and shifts of market share among options markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[25] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–139 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–2012–139. 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

Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[16] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[17] *See* Securities Exchange Act Release Nos. 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR–Phlx–2012–77).

[18] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[22] To the extent that the Approval Order modified the Exchange's Pricing Schedule by restoring a previous amendment which was not the subject of the Approval Order, the Exchange addresses those amendments in a separate rule change. *See* SR–Phlx–2012–137 (not yet published).

[23] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2012–139 and should be submitted on or before January 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29965 Filed 12–11–12; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68360; File No. SR–CBOE–2012–115]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Volume Incentive Program (''VIP'') to state that a Trading Permit Holder (''TPH'') may request to receive its credit under the VIP as a separate direct payment. Currently, TPHs receive their credits under the VIP as line-item credits on their overall monthly bills from the Exchange. However, for convenience reasons regarding TPHs' systems and procedures for processing credits received under the VIP, a number of TPHs have requested to receive such credits as separate payments from the Exchange. This poses little problem to the Exchange's billing processes, so the Exchange proposes to provide this option to requesting TPHs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)4 requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Providing TPHs with the opportunity to request to receive their credits under the VIP as separate direct payments will provide TPHs with another, possibly more convenient, manner in which to receive their credits under the VIP, which perfects the mechanism for a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(6)[6] thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 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–CBOE–2012–115. 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 20549–1090, 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 CBOE's principal office and on its Internet Web site. 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–2012–115, and should be submitted on or before January 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29929 Filed 12–11–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68378; File No. SR–NASDAQ–2012–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Establish the Market Quality Program

December 6, 2012.

On March 23, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Market Quality Program ('MQP''). On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 12, 2012.[3] The Commission initially received fifteen comment letters on the proposed rule change.[4] On May 18, 2012, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to July 11, 2012.[5] The Commission subsequently received three additional comment letters on the proposed rule change and a response letter from the Exchange.[6]

On July 11, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] The Commission thereafter received six comment letters and two response letters and one email response from the Exchange.[8] On October 2, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.[9] On November 6, 2012, the Exchange submitted Amendment No. 2 to the proposed rule change.[10] On December 6, 2012, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

[4] *See* Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O'Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter from Anonymous, dated April 18, 2012; Letter from Mark Connell, dated April 19, 2012; Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012; Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012; Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012; Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012; Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012; Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012; and Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012.

[5] *See* Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012).

[6] *See* Letter from Gary L. Gastineau, Managing Member, ETF Consultants LLC, dated June 11, 2012; Letter from Rey Ramsey, President & CEO, TechNet, dated June 20, 2012; and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated July 3, 2012. *See also* Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012.

[7] *See* Securities Exchange Act Release No. 67411, 77 FR 42052 (July 17, 2012).

[8] *See* Letter from Joseph Cavatoni, Managing Director, and Joanne Medero, Managing Director, BlackRock, Inc., dated July 11, 2012; Letter from Stanislav Dolgopolov, Assistant Adjunct Professor, UCLA School of Law, dated August 15, 2012; Letter from James E. Ross, Global Head, SPDR Exchange Traded Funds, State Street Global Advisors, dated August 16, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated August 16, 2012; Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated August 16, 2012; and Letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 16, 2012. *See also* Letters from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ OMX LLC, dated August 30, 2012 and Jurij Trypupenko, Esq., NASDAQ, dated September 7, 2012, and email from Ed Knight, NASDAQ, dated September 19, 2012.

[9] *See* Securities Exchange Act Release No. 67961, 77 FR 61452 (October 9, 2012).

[10] In Amendment No. 2, the Exchange proposed to amend its proposed rule text to: (i) Add provisions requiring it to disclose on its Web site: (a) The dates that MQP Securities commence participation in and withdraw or are terminated from the MQP, (b) a statement about the MQP that sets forth a general description of the MQP as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the MQP (*e.g.,* enhancement of liquidity and market quality in MQP Securities) as well as the potentially negative aspects and risks of the MQP (*e.g.,* possible lack of liquidity and negative price impact on MQP Securities that withdraw or are terminated from the MQP), and indicates how interested parties can get additional information about products in the MQP, and (c) when it receives notification that an MQP Company or MQP Market Maker intends to withdraw from the MQP, and the date of actual withdrawal or termination from the MQP; (ii) add a requirement that during such time that an MQP Company lists an MQP Security, the MQP Company must, on a product-specific Web site for each product, indicate that the product is in the MQP and provide the link to the Exchange's MQP Web page; (iii) add a provision clarifying that the MQP Fee in respect of an ETF shall be paid by the sponsor(s) of such ETF, and the MQP Fee in respect of a TIR shall be paid by the sponsor(s) of such TIR, as applicable; (iv) amend the termination provision to provide that the MQP will terminate in respect of an MQP Security if such MQP Security sustains an average daily trading volume

Exchange withdrew the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto (SR–NASDAQ–2012–043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29960 Filed 12–11–12; 8:45 am]

BILLING CODE 8011–01–P

(consolidated trades in all U.S. markets) (''ATV'') of 1.0 million shares or more for three consecutive months (the previously proposed termination threshold was average daily trading volume of 2.0 million shares or more traded on NASDAQ for three consecutive months); and (v) amend the definition of ''MQP Company'' to clarify that such term means a fund sponsor or issuer, as applicable, that lists an MQP Security on the Exchange pursuant to the MQP (the previously proposed definition defined an ''MQP Company'' as a fund sponsor or ''other entity'' that lists an MQP Security on the Exchange pursuant to the MQP).

In Amendment No. 2, the Exchange further proposed to amend the filing to state that while the Exchange originally proposed a termination threshold of 2.0 million shares or more ATV for three consecutive months, it is scaling back the threshold to better provide an opportunity to observe the impact, if any, on MQP Securities that exceed the threshold and ''graduate'' from the MQP. The Exchange notes that it has compiled statistics indicating that ''graduation'' from the MQP may occur more frequently at a 1.0 million ATV threshold than at a 2.0 million ATV threshold, and includes a chart showing from years 2001 to 2012 the number of ETFs that would have graduated from the MQP under the 2.0 million and 1.0 million ATV thresholds. Finally, in Amendment No. 2, the Exchange proposed to amend the filing to make the following additional representations: (i) the Exchange represents that it will post on its Web site the monthly reports that it provides to the Commission relating to the MQP during the pilot period; (ii) the Exchange represents that it will endeavor to provide similar data to the Commission about comparable products that are listed on the Exchange that are not in the MQP and any other MQP-related data and analysis requested by Commission staff for the purpose of evaluating the efficacy of the MQP; and (iii) the Exchange represents that it will issue to its members an information bulletin about the MQP prior to operation of the MQP.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68368; File No. SR–ODD–2012–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Adjustments for Cash Dividends and Distributions in Respect of Options Overlying Less than 100 Shares To Accommodate the Trading of Mini Options

December 6, 2012.

On October 2, 2012, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five preliminary copies of a supplement (''November 2012 Supplement'') to amend the options disclosure document (''ODD'') to reflect certain changes to disclosure regarding adjustments for cash dividends and distributions in respect of options overlying less than 100 shares to accommodate the trading of mini options.[2] On November 14, 2012, the OCC submitted to the Commission definitive copies of the November 2012 Supplement.[3]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. In September 2012, the Commission approved proposed rule changes that permitted the International Securities Exchange, LLC and NYSE Arca, Inc. to list and trade mini options (''Mini Options'') overlying 10 shares of SPDR S&P 500 ETF, Apple Inc., SPDR Gold Trust, Google Inc., and Amazon.com, Inc.[4] Subsequently, NASDAQ OMX PHLX LLC filed a proposed rule change to list and trade these Mini Options.[5] The current proposed November 2012 Supplement amends the ODD disclosure to accommodate adjustments for cash dividends and distributions in respect of options overlying less than 100 shares.[6] This change will help to ensure that Mini Options are adjusted when the corresponding standard-sized options are adjusted. Specifically, the November 2012 Supplement would make clear that no adjustment will normally be made for any cash dividend or distribution that amounts to less than $0.125 per underlying share. In addition, for contracts originally listed with a unit of trading larger than 100 shares, the November 2012 Supplement will continue to provide that no adjustment normally would be made for any cash dividend or distribution that amounts to less than $12.50 per contract. The proposed supplement is intended to be read in conjunction with the more general ODD, which discusses the characteristics and risks of options generally.[7]

Rule 9b–1(b)(2)(i) under the Act[8] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the public interest and protection of investors.[9] In addition, five copies of the definitive ODD, as amended or supplemented,

[1] 17 CFR 240.9b–1.

[2] *See* letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets (''Division''), Commission, dated October 1, 2012.

[3] *See* letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated November 9, 2012.

[4] *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR–NYSEArca–2012–64 and SR–ISE–2012–58).

[5] *See* Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (SR–Phlx–2012–126) (notice of filing and immediate effectiveness of proposed rule change to list and trade Mini Options).

[6] The Commission recently approved a proposed rule change by the OCC to make similar changes to its By-Laws. *See* Securities Exchange Act Release Nos. 67917 (September 24, 2012), 77 FR 59687 (September 28, 2012) (''OCC Notice'') and 68104 (October 25, 2012), 77 FR 65917 (October 31, 2012) (SR–OCC–2012–16). In its filing, the OCC stated that without the By-Law amendments, some cash dividends or distributions that would exceed the adjustment threshold in the case of standard options would not exceed the adjustment threshold in the case of a Mini Option because the per contract distribution on the Mini Option would be only 1/10th of the distribution on the standard option and the adjustment threshold was stated on a per contract basis rather than a per share basis. Therefore, the OCC amended, with Commission approval, the adjustment threshold from $12.50 per contract to $0.125 per share. In its filing, the OCC also stated that it did not intend for the rule change to affect options contracts that were originally listed with units of trading in excess of 100 shares.

[7] The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when changes regarding Mini Options are made in the future. Any future changes to the rules of the options markets concerning Mini Options would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[8] 17 CFR 240.9b–1(b)(2)(i).

[9] This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

must be filed with the Commission not later than the date the amendment or supplement, or the amended ODD, is furnished to customers. The Commission has reviewed the proposed November 2012 Supplement, and the amendments to the ODD contained therein, and finds that, having due regard to the adequacy of the information disclosed and the public interest and protection of investors, the supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[10] that definitive copies of the November 2012 Supplement to the ODD (SR–ODD–2012–02), reflecting changes to disclosure regarding adjustments for cash dividends and distributions in respect of options overlying less than 100 shares, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29930 Filed 12–11–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.9b–1.

[11] 17 CFR 200.30–3(a)(39).

DEPARTMENT OF STATE

[Public Notice 8110]

60-Day Notice of Proposed Information Collection: Statement of Consent: Issuance of a U.S. Passport to a Minor Under Age 16

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. 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 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *February 11, 2013.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PPTFormsOfficer@state.gov.*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.
- *Fax:* (202) 663–2410.
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

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 PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037 who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16.
- *OMB Control Number:* 1405–0129.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/PMO/PC).
- *Form Number:* DS–3053.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 1,260,000 respondents per year.
- *Estimated Number of Responses:* 1,260,000 responses per year.
- *Average Time Per Response:* 5 minutes.
- *Total Estimated Burden Time:* 105,000 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a 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

The information collected on the DS–3053, ''Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16'', is used in conjunction with the DS–11, ''Application for a U.S. Passport''. When a minor under the age 16 applies for a passport and one of the minor's parents or legal guardians is unavailable at the time the passport application is executed, a completed and notarized DS–3053 can be used as the statement of consent. If the required statement is not submitted, the minor cannot receive a U.S. passport. The required statement may be submitted in other formats provided they meet statutory and regulatory requirements.

The legal authority permitting this information collection assists the Department of State to administer the regulations in 22 CFR 51.27 requiring that both parents and/or any guardian consent to the issuance of a passport to a minor under age 16, except where one parent has sole custody. This regulation was mandated by Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations authorization Act, Fiscal Year 2000 and 2001 (enacted by Public Law 106–113, Div. B, Section 1000 (a)(7)), and helps to prevent international child abduction.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–3053, ''Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16''. Passport applicants can either download the DS–3053 from the Internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, ''Application for a U.S. Passport''.

Dated: November 28, 2012.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–30022 Filed 12–11–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8111]

Request for Information for the 2013 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000, (Div. A, Pub. L. 106–386) as amended (''TVPA''). This information will assist in the preparation of the Trafficking in Persons Report (''TIP Report'') that the Department submits annually to appropriate committees in the U.S. Congress on countries' level of compliance with the minimum standards. Foreign governments that do not comply with the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by January 31, 2013. Please refer to the Addresses, Scope of Interest and Information Sought sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by the Office to Monitor and Combat Trafficking in Persons by 5 p.m. on January 31, 2013.

ADDRESSES: Written submissions and supporting documentation may be submitted to the Office to Monitor and Combat Trafficking in Persons by the following methods:

- *Facsimile (fax):* 202–312–9637.
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (J/TIP), 1800 G Street NW., Suite 2148, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.
- *Email (preferred): tipreport@state.gov* for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' compliance with the minimum standards for the elimination of trafficking in persons in the year 2012. The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant and probative of the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. These questions are designed to elicit information relevant to the minimum standards for the elimination of trafficking in persons. Only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state and federal government efforts. To the extent possible, precise dates should be included.

Where applicable, written narratives providing factual information should provide citations to sources and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. The Department does not include in the report, and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of human trafficking.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources in order to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The TIP Report is the most comprehensive worldwide report on foreign governments' efforts to combat trafficking in persons. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. Government uses the TIP Report to engage in diplomacy to encourage partnership in creating and implementing laws and policies to combat trafficking and to target resources on prevention, protection, and prosecution programs. Worldwide, the report is used by international organizations, foreign governments, and nongovernmental organizations alike as a tool to examine where resources are most needed. Freeing victims, preventing trafficking, and bringing traffickers to justice are the ultimate goals of the report and of the U.S Government's anti-human trafficking policy.

The Department prepares the TIP Report using information from across the U.S. government, U.S. embassies, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The TIP Report focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and prison sentences for traffickers, as well as victim protection measures and prevention efforts. Each TIP Report narrative also includes a section on recommendations. These recommendations are then used to assist in measuring progress from one year to the next and determining whether governments comply with the minimum standards to eliminate trafficking in persons or are making significant efforts to do so.

The TVPA creates a three tier ranking system. This placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is a consideration. The Department first evaluates whether the government fully complies with the TVPA's minimum standards for the elimination of

trafficking. Governments that fully comply are placed on Tier 1. For other governments, the Department considers the extent of efforts to reach compliance. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, moves Tier 2 countries to Tier 2 Watch List. For more information, the 2012 TIP Report can be found at *http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm*.

Since the inception of the TIP Report in 2001, the number of countries included and ranked has more than doubled to include 185 countries in the 2012 TIP Report. Around the world, the TIP Report and the best practices reflected therein have inspired legislation, national action plans, implementation of policies and funded programs, protection mechanisms that complement prosecution efforts, and a comprehensive understanding of the issue.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). The United States voluntarily, through a collaborative interagency process, includes in the TIP Report an analysis of U.S. Government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA. This analysis in the TIP Report is done in addition to the AG Report, resulting in a multi-faceted self-assessment process of expanded scope.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. After reasonable requests from the

Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience and that experience should be noted. Citations to source material must also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? (E.g., are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem?)

2. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies, and implementation strategies exist (e.g., substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally, and in relation to court proceedings)?

3. Please provide observations regarding the implementation of existing laws and procedures.

4. Is the government equally vigorous in pursuing labor trafficking and sex trafficking?

5. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime? Are sex trafficking sentences commensurate with rape sentences?

6. Do government officials understand the nature of trafficking? If not, please provide examples of misconceptions or misunderstandings.

7. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

8. Please provide observations regarding the efforts of police and prosecutors to pursue trafficking cases.

9. Are government officials (including law enforcement) complicit in human trafficking by, for example, profiting from, taking bribes, or receiving sexual services for allowing it to continue? Are government officials operating trafficking rings or activities? If so, have these government officials been subject to an investigation and/or prosecution? What punishments have been imposed?

10. Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals of the country deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate trafficking?

11. Has the government investigated, prosecuted, convicted, and sentenced organized crime groups that are involved in trafficking?

12. Is the country a source of sex tourists and, if so, what are their destination countries? Is the country a destination for sex tourists and, if so, what are their source countries?

13. Please provide observations regarding government efforts to address the issue of unlawful child soldiering.

14. Does the government make a coordinated, proactive effort to identify victims? Is there any screening conducted before deportation to determine whether individuals were trafficked?

15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, health care, repatriation)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

16. How could victim services be improved?

17. Are services provided equally and adequately to victims of labor and sex trafficking? Men, women, and children? Citizen and noncitizen?

18. Do service organizations and law enforcement work together cooperatively, for instance, to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service organizations and law enforcement?

19. May victims file civil suits or seek legal action against their trafficker? Do victims avail themselves of those remedies?

20. Does the government repatriate victims? Does the government assist with third country resettlement? Does the government engage in any analysis of whether victims may face retribution or hardship upon repatriation to their country of origin? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

21. Does the government inappropriately detain or imprison identified trafficking victims?

22. Does the government punish trafficking victims for forgery of documents, illegal immigration, unauthorized employment, or participation in illegal activities directed by the trafficker?

23. What efforts has the government made to prevent human trafficking?

24. Are there efforts to address root causes of trafficking such as poverty; lack of access to education and economic opportunity; and discrimination against women, children, and minorities?

25. Does the government undertake activities that could prevent or reduce vulnerability to trafficking, such as registering births of indigenous populations?

26. Does the government provide financial support to NGOs working to promote public awareness or does the government implement such campaigns itself? Have public awareness campaigns proven to be effective?

27. Please provide additional recommendations to improve the government's anti-trafficking efforts.

28. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: December 6, 2012.

Luis CdeBaca,

Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State.

[FR Doc. 2012–30004 Filed 12–11–12; 8:45 am]

BILLING CODE 4710–00–P

DEPARTMENT OF STATE

[Public Notice 8112]

Culturally Significant Object Imported for Exhibition Determinations: ''Connecting Collections: Collecting Connections. 50 Years of Pre-Columbian Art at Dumbarton Oaks''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Connecting Collections: Collecting Connections. 50 Years of Pre-Columbian Art at Dumbarton Oaks,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at Dumbarton Oaks, Washington, DC, from on or about December 18, 2012, until on or about January 4, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 30, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–30000 Filed 12–11–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8113]

Foreign Affairs Policy Board Meeting Notice; Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on January 3, 2013, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Samantha Raddatz at (202) 647–2372.

Dated: December 4, 2012.

Marisa McAuliffe,

Designated Federal Officer.

[FR Doc. 2012–29991 Filed 12–11–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a public interest Buy America waiver is appropriate for the use of American and Canadian steel and iron products in the construction of the New International Trade Crossing (NITC) project.

DATES: The effective date of the waiver is December 13, 2012.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The NITC project is a new border crossing proposed by the State of Michigan and the Government of Canada over the Detroit River linking Detroit, Michigan, to Windsor, Ontario. The State of Michigan and Canada signed a Crossing Agreement on June 15, 2012, authorizing the construction of the NITC. This Crossing Agreement provides a framework for a Crossing Authority established by Canada to design, construct, finance, operate, and maintain a new International Crossing between Canada and Michigan, under the oversight of a jointly established International Authority, and through one or more Public-Private Agreements with one or more private sector Concessionaires.

The Michigan components of the project that are not funded by the private sector Concessionaire(s) or by the US Federal government will be financed entirely with funds advanced by Canada (the ''Canadian Contributions''). These components include the interchange linking the bridge to I–75, the Michigan approach, and the Michigan plaza (collectively, the ''Michigan Components''). A record of decision (ROD) was signed by the FHWA for the NITC project on January 14, 2009, pursuant to the National Environmental Policy Act (NEPA), after extensive consideration of various alternatives, including the no build alternative, that were identified in the draft environmental impact statement (DEIS).

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. Here, the Governor of Michigan requests a waiver from Buy America on the basis that a

waiver for this project is in the public interest.

In determining whether a waiver is in the public interest. The FHWA's decision is based on weighing the various factors surrounding each such request for a Buy America waiver. The circumstances for this particular waiver request by Michigan reflect the unique financing structure under which the Canadian government will bear the majority of the financial risk for constructing the NITC and the potential for the project to produce substantial economic and transportation benefits. Accordingly, this notice announces that a partial Buy America waiver is in the public interest to use American and Canadian steel and iron products in the construction of the NITC Project, and describes the reasons weighing in favor of this decision.

Discussion of Comments

In accordance with Title I, Division C, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2012'' (Pub. L. 112–55), the FHWA posted a notice of, and requested comments on, a proposed public interest waiver on its Web site for use of American and Canadian steel and iron products in the construction of the NITC project (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=80*) on August 31, 2012. The FHWA received 122 comments in response to the publication. Of these comments, 91 supported the proposed waiver while 13 opposed it. Also, 3 commenters did not express either support or opposition for the proposed waiver or the project. An additional 15 commenters expressed opinions on the NITC project itself, with 8 commenters expressed support and 7 opposed.

Comments were mostly submitted by individuals. Comments were also received from five unions (United Steelworkers, Michigan AFL–CIO, Michigan Regional Council of Carpenters, Transportation Trades Department (TTD) of the AFL–CIO, and the United Auto Workers), each of whom expressed support for the proposed waiver. Additional comments were received from 13 associations, each of which also expressed support for the proposed waiver, including the American Iron and Steel Institute (AISI). Comments were also received from 11 businesses. Of them, five steel companies and Ford Motor Company expressed support for the proposed waiver. Only one of these 11 businesses, the Detroit International Bridge Company (DIBC), opposed the proposed waiver.

Generally, support expressed by the commenters for the proposed waiver highlighted the notion of fairness of allowing the use of Canadian and American steel given the unique financing arrangement of the project under which the Canadian government is bearing most of the project cost. For example, the AISI commented that it is a strong supporter of Buy America, but given the unique financing arrangement for the NITC project, AISI supports granting a public interest waiver to allow the use of Canadian and America Steel. The United Steelworkers commented that this proposed waiver is a ''one-of-a-kind circumstance'' involving a unique financing mechanism where Canada is advancing all the funds to build the bridge and assuming all of the financing risk. The Michigan AFL–CIO noted that the NITC is financed solely by Canada. The Michigan Regional Council of Carpenters commented that the ''NITC project presents a unique situation'' whereby Canada is fronting all of the construction costs so it is only appropriate that the project uses both American and Canadian steel. The TTD commented that ''TTD has a clear record of urging full compliance with federal Buy America laws. However, given the nature of this project, the shared investment by both the U.S. and Canadian governments, and the uniquely integrated industries that span the US Canadian border, [TTD] feels that the waiver application is appropriate and beneficial in this specific instance.''

Other comments supported the waiver as necessary in order to facilitate the construction of a project that has the potential to produce substantial economic and transportation benefits. For example, Ford Motor Company cited to a study by the Center of Automotive Research outlining the significant economic benefits of the NITC, which include:

- Jobs from bridge construction: 6,000 in each of the first 2 years of construction and 5,100 jobs in the final 2 years;
- Jobs from Statewide construction projects resulting from the federal match: 6,600 jobs per year for 4 years;
- Jobs from bridge operations: 1,400 permanent jobs;
- Jobs from new private investment: 6,800 permanent jobs; and
- Overall economic growth: Michigan state domestic product increased by $2.2 billion, personal income increased by $4 billion, and State and local revenue increased by $400 million.

Also, the United Steelworkers noted that this project will create good jobs, including demand for at least 10,000 direct jobs and thousands of indirect jobs. The United Steelworkers further noted that millions of jobs in both countries are dependent on trade between the US and Canada, and the NITC will help retain and create more trade between the two nations. The Michigan AFL–CIO commented that in 2011, the US and Canada shared $597 billion in trade. This trade relationship supports 11 million jobs, of which 8 million are in the US and 230,000 are in Michigan. When complete, the NITC will position Michigan to expand as a trade hub creating economic growth and additional jobs. GreenStone Farm Credit Services commented that for 35 States, Canada is their principal export market, and the new bridge will create the first freeway-to-freeway connection between Detroit and Windsor. Amway Corporation commented that the new crossing is critical because American trade with Canada increases annually with truck traffic predicted to triple in the next 30 years. The TTD commented that this project would help create thousands of good paying American jobs with 10,000 direct construction jobs and 25,000 indirect jobs. The United Auto Workers commented that this project will create many thousands of well-paying construction jobs and additional spin-off jobs. The United Auto Workers further noted that the auto industry depends on a quick and easy border crossing for components and completed vehicles, and the NITC will assure adequate border mobility for the auto industry for many decades into the future.

Substantive comments opposing the proposed waiver, including comments from the DIBC, generally made the point that a private company is prepared to build a second bridge using only American iron and steel. The merits and impacts of constructing the NITC were extensively studied, weighed, and analyzed in the January 14, 2009, ROD. The process leading to the ROD considered numerous alternatives, including the DIBC proposal to construct its own new bridge. After considering these alternatives, the FHWA selected the present project that is subject to the proposed waiver.

The DIBC also expressed other comments that were considered in the environmental process for the NITC project. These comments include statements that the NITC will destroy businesses and result in a net loss of jobs. For the reasons articulated in the ROD regarding the selection of the current project over other alternatives, including the alternative proposed by DIBC as well as the consideration of the

impacts to businesses, the FHWA directs commenters' attention to the ROD and other supporting documents and analyses, including the November 21, 2008, final environmental impact statement (FEIS). Because these impacts have already been considered in the environmental process, the FHWA declines to conduct a redundant analysis to reevaluate the merits of other alternatives. As such, the FHWA does not deem these factors to be relevant to consideration of the appropriateness of a Buy America waiver.

DIBC comments that this waiver is not in the public interest because the construction of the NITC is not authorized under Michigan State law. However, the FHWA declines to take a position on the application of Michigan State law.

The DIBC also comments that the proposed waiver is not in the public interest for the reasons specified in the DIBC's comments to the Secretary of State regarding the Governor's application for a Presidential permit. These comments, while voluminous, do not directly address the FHWA's consideration of the proposed waiver.

Some commenters suggested that specific percentages be established regarding the ratios of Canadian and American steel and iron that will be used in the construction of the NITC. While the specification of such percentages may appear reasonable, the FHWA does not believe that the specification of such percentages in advance of a decision on the proposed waiver is in the public interest. It will be difficult to determine exactly how such percentages would be established absent specific contractor bids or proposals from potential public private partnership entities.

Another comment asked that, in light of Michigan's plan to leverage the Canadian financial contribution to the NITC as the State's matching share for other Federal-aid highway projects, the FHWA should clarify whether the proposed waiver is specific to the NITC or whether it will apply more broadly to Michigan's highway program in general. In response to this concern, the FHWA clarifies that the waiver proposed here is specific only to the NITC and will not apply to any other Federal-aid highway projects.

After considering and weighing all of the comments that have been submitted in response to the proposed waiver, including those specifically mentioned and discussed above, it is the FHWA's decision that the Governor's request to partially waive the application of Buy America to the NITC project to allow the use of both American and Canadian steel and iron is granted. The proposed waiver here presents a unique circumstance, as mentioned by the commenters highlighted above, under which Canada is assuming all financial liability and risk for the construction of this project. In light of the Canadian financial contribution, the FHWA believes that the basic notion of fairness weighs in favor of allowing Canadian iron and steel to be used so long as American iron and steel is allowed to compete on an equal basis. Moreover, the Canadian financial contribution to the project will make possible the creation of thousands of direct and indirect construction jobs, as well as numerous other jobs in the American economy, as a result of increased trade and productivity between the US and Canada.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements for the NITC project is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to NITC waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: December 5, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2012–29917 Filed 12–11–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2012–0056]

Notice of Request for New Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the following new information collections:

49 U.S.C. Section 5337—State of Good Repair Grants Program;

49 U.S.C. Section 5339—Bus and Bus Facilities Program.

DATES: Comments must be submitted before February 11, 2013.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

49 U.S.C. State of Good Repair Grants Program—Mr. Eric Hu, FTA Office of Program Management (202) 366–0870, or email: *Eric.Hu@dot.gov.*

49 U.S.C. Bus and Bus Facilities Program—Mr. Samuel Snead, FTA Office of Program Management (202) 366–1089, or email: *Samuel.Snead@dot.gov*.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collections for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5337—State of Good Repair Grants Program

(OMB Number: 2132–NEW)

Background: 49 U.S.C. Section 5337, the State of Good Repair Grants Program, is a new program authorized by Moving Ahead for Progress in the 21st Century (MAP–21). The State of Good Repair Grants Program replaces the SAFETEA–LU Fixed Guideway Modernization Program. This program authorizes the Secretary of Transportation to make grants to designated recipients to replace and rehabilitate high intensity fixed guideway systems and high intensity motorbus systems. Eligible recipients include state and local government authorities in urbanized areas with high intensity fixed guideway systems and/or high intensity motorbus systems operating for at least seven years. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. FTA will apportion funds to designated recipients. The designated recipients will then allocate funds as appropriate to recipients that are public entities in the urbanized areas. FTA can make grants to direct recipients after sub-allocation of funds. Recipients apply for grants electronically, and FTA collects milestone and financial status reports from designated recipients on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Respondents: State and local government.

Estimated Annual Burden on Respondents: 58 hours per submission.

Estimated Total Annual Burden: 9,120 hours.

Frequency: Annual.

Title: 49 U.S.C. Section 5339 Bus and Bus Facilities Program

(OMB Number 2132–NEW)

Background: 49 U.S.C. Section 5339—Bus and Bus Facilities Formula Program, is a new program authorized by Moving Ahead for Progress in the 21st Century (MAP–21). This program authorizes the Secretary of Transportation to make grants to designated recipients and states to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities. Eligible sub-recipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. Recipients apply for grants electronically and FTA collects milestone and financial status reports from designated recipients and states on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Respondents: Designated recipients and states.

Estimated Annual Burden on Respondents: 58 hours per submission.

Estimated Total Annual Burden: 8,910 hours.

Frequency: Annual.

Issued: December 6, 2012.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2012–29937 Filed 12–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 6, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 11, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–0162.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Credit for Federal Tax Paid on Fuels.

Form: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of the income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

Affected Public: Private Sector: Businesses or other For-Profit Institutions.

Estimated Total Burden Hours: 4,122,067.

OMB Number: 1545–2001.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Rev. Proc. 2006–16, Renewal Community Depreciation Provisions.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed is service in the expanded area of renewal community pursuant to Sec. 1400E(g) of the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other For-Profit Institutions.

Estimated Total Burden Hours: 150.

OMB Number: 1545–1850.

Type of Review: Reinstatement without change of a previously approved collection.

Title: REG–140930–02 (TD 9178—Final) Testimony or Production of Records in a Court or Other Proceeding (TD 9178).

Abstract: This document contains final regulations replacing the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of

IRS records or information. The purpose of the final regulations is to provide specific instructions and to clarify the circumstances under which more specific procedures take precedence. The final regulations extend the application of the regulation to former IRS officers and employees as well as to persons who are or were under contract to the IRS. The final regulations affect current and former IRS officers, employees and contractors, and persons who make requests or demands for disclosure.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 1,400.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–29933 Filed 12–11–12; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 6, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 11, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–2197.

Type of Review: Revision of a currently approved collection.

Title: Form 1097–BTC, Bond Tax Credit.

Form: 1097–BTC.

Abstract: This is an information return for reporting tax credit bond credits distributed to holders of tax credit bonds. The taxpayer holding a tax credit bond on an allowance date during a tax year is allowed a credit against federal income tax equivalent to the interest that the bond would otherwise pay. The bondholder must include the amount of the credit in gross income and treat it as interest income. The issuers and holders of the tax credit bond will send Form 1097–BTC to the bond holders quarterly and file the return with the IRS annually.

The methodology used to calculate this burden has been changed from a ''business'' form to a ''special business'' form to better reflect more realistic filing requirements. A business form's calculation variables include attachments, code references, line items and responses. Special business forms only include line items and responses. The exclusion of these business variables in the special business calculation results in an overall decrease in burden of 794,749,486 hours.

Affected Public: Private Sector: Businesses or other For-Profit Institutions.

Estimated Total Burden Hours: 33,538,022.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–29915 Filed 12–11–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID: OCC–2012–0019]

Mutual Savings Association Advisory Committee Meeting

AGENCY: Department of the Treasury, Office of the Comptroller of the Currency.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC or Committee).

DATES: A public meeting of the MSAAC will be held on January 16, 2013, beginning at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The January 16, 2013, meeting of the MSAAC will be held at 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Deputy Comptroller for Thrift Supervision, (202) 874–5020, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the OCC MSAAC will convene a meeting on Wednesday, January 16, 2013, at the OCC's headquarters at 400 7th Street SW., Washington, DC 20219. The OCC will hold a short administrative session from 8:00 a.m. to 8:30 a.m. EST. The meeting will begin and will be open to the public at 8:30 a.m. EST. Agenda items include a discussion of the status of the mutual savings association industry and current topics of interest to the industry. The purpose of the meeting is for the MSAAC to advise the OCC on the regulatory changes or other steps the OCC may be able to take to ensure the continued health and viability of mutual savings associations, and other issues of concern to the existing mutual savings associations. Members of the public may submit written statements to the MSAAC by any one of the following methods:

- *Email to: MSAAC@occ.treas.gov;* or
- *Mail in triplicate to:* Donna Deale, Designated Federal Official, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than Friday, January 4, 2013. The meeting will be held in a secured facility with limited space. Therefore, members of the public who plan to attend the meeting, and members of the public who require auxiliary aid, must contact the OCC by 5:00 p.m. EST on Friday, January 4, 2013, to inform the OCC of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the OCC building. Attendees should provide their full name, email address, and organization. Members of the public may contact the OCC via email at *MSAAC@occ.treas.gov* or by telephone at 202–874–5020. On the day of the meeting, attendees will be required to present proof of identification (a driver's license or other government issued photo identification) upon arrival at the OCC in order to gain entrance to the meeting.

Dated: December 4, 2012.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2012–29919 Filed 12–11–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the extension of information collections under the regulations which were issued pursuant to the Government Securities Act.

DATES: Written comments should be received on or before February 12, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION: *Title:* Implementing Regulations: Government Securities Act of 1986, as amended.

OMB Number: 1535–0089.

Abstract: The information collections are contained within the regulations issued pursuant to the Government Securities Act (GSA), as amended (15 U.S.C. 780–5), which require government securities brokers and dealers to make and keep certain records concerning their business activities and their holdings of securities, to submit financial reports, and to make certain disclosures to investors. The regulations also require depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and dealer financial responsibility.

Current Actions: None.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector (Government securities brokers and dealers and depository institutions.).

Estimated Number of Respondents: 3,114.

Estimated Total Annual Responses: 8,285.

Estimated Total Annual Burden Hours: 282,986.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 6, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–29889 Filed 12–11–12; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

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Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, and 2578

Notice of Proposed Amendment to Prohibited Transaction Exemption 2006–06 (PTE 2006–06) for Services Provided in Connection With the Termination of Abandoned Individual Account Plans; Amendments to the Abandoned Plan Regulations; Notice and Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11657]

ZRIN EBSA–2012–0015

Notice of Proposed Amendment to Prohibited Transaction Exemption 2006–06 (PTE 2006–06) for Services Provided in Connection With the Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Proposed Amendment to PTE 2006–06.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 2006–06, a prohibited transaction class exemption issued under the Employee Retirement Income Security Act of 1974 (ERISA). Among other things, PTE 2006–06 permits a ''qualified termination administrator'' (QTA) of an individual account plan that has been abandoned by its sponsoring employer to select itself to provide services to the plan in connection with the plan's termination, and to pay itself fees for those services.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 11, 2013.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed amendment should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210, Attention: PTE 2006–06 Amendment. Interested persons are also invited to submit comments and hearing requests to EBSA via email to: *moffitt.betty@dol.gov* or by fax to 202–219–0204 by the end of the scheduled comment period. The comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at *www.regulations.gov* and *www.dol.gov/ebsa,* at no charge.

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information), or confidential business information, that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 2006–06. This amendment to PTE 2006–06 is being proposed in connection with the Department's proposed amendment of regulations relating to the Termination of Abandoned Individual Account Plans at 29 CFR 2578.1 (the QTA Regulation), the Safe Harbor for Distributions from Terminated Individual Account Plans at 29 CFR 2550.404a–3 (the Safe Harbor Regulation), and the Special Terminal Report for Abandoned Plans at 29 CFR 2520.103–13 (collectively, the Abandoned Plan Regulations). The proposed amendments to the Abandoned Plan Regulations are being published simultaneously in this issue of the **Federal Register**. PTE 2006–06 provides an exemption from the restrictions of section 406(a)(1)(A) through (D), section 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

If adopted, this proposed amendment to PTE 2006–06 would affect plans, participants and beneficiaries of such plans, and certain persons engaging in the transactions covered by the class exemption.

The Department is proposing the amendment on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), ''significant'' regulatory actions are subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Section 3(f) of the executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that that this proposed amendment is not ''significant'' under section 3(f) of the executive order. Accordingly, OMB has not reviewed the proposed amendment.

PTE 2006–06 permits a QTA of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, and to pay itself or an affiliate fees for those services, provided that such fees are consistent with the conditions of the proposed exemption. The exemption also permits a QTA to: Designate itself or an affiliate as a provider of an individual retirement plan or other account; select a proprietary investment product as the initial investment for the rollover distribution of benefits for a participant or beneficiary who fails to make an election regarding the disposition of such benefits; and, pay itself or its affiliate in connection with the rollover.

The proposed amendment to PTE 2006–06 would expand the definition of QTA to include Bankruptcy Trustees (described below) and certain persons designated by such trustees to act as QTAs. The Department is proposing the amendment because it has determined that, in certain instances, it may be appropriate for a Bankruptcy Trustee to provide termination services to a plan. Currently, PTE 2006–06 and the accompanying QTA regulations do not cover plans of sponsors involved in chapter 7 bankruptcy proceedings, because such plans are not considered to be abandoned due to the fact that the Bankruptcy Trustee assumes the role of the plan administrator under the Bankruptcy Code. Moreover, Bankruptcy Trustees cannot serve as

[1] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. app. at 214 (2000) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

QTAs under the current regulation and PTE 2006–06 because they are unable to meet the QTA definition.

Accordingly, as addressed more fully elsewhere in this preamble, the Department is proposing to expand the definition of QTA to include Bankruptcy Trustees and certain persons designated by them to act as QTAs in terminating and winding up the affairs of abandoned plans. As noted above, this proposed amendment to the class exemption is being published concurrently with proposed amendments to the Abandoned Plan Regulations. Because compliance with the QTA Regulation is required under the proposed amendment, the costs and benefits that would be associated with complying with the proposed amendment to the class exemption have been described and quantified in connection with the economic impact of the proposed amendment to the QTA Regulation.

The Department believes that the proposed amendments to the Abandoned Plan Regulations and PTE 2006–06 will incentivize many bankruptcy trustees to carryout plan terminations consistent with ERISA, which the Department expects ultimately would benefit participants and beneficiaries of such plans by ensuring abandoned plans are terminated in an orderly and cost-effective manner.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The proposed amendment to PTE 2006–06 would only be used by QTAs that also take advantage of the proposed amendment to the QTA Regulation, which is published elsewhere in this issue of the **Federal Register**. The Department has combined the hour and cost burdens associated with the proposed amendment to the class exemption with the hour and cost burden associated with the amended proposed regulation, under one Information Collection Request (ICR) that will be filed with OMB. By combining the two ICRs, the Department believes that the regulated community will gain a better understanding of the overall burden impact of terminating abandoned plans pursuant to the proposed amendments. The specific burden for the proposed amendment to the class exemption includes a recordkeeping requirement for a Bankruptcy Trustee that terminates an abandoned plan and chooses to roll over the account balances of missing or nonresponsive participants into individual retirement plans offered by it or an affiliate. The hour and cost burden for the ICR are described more fully in the preamble to the proposed amendment to the regulation under the Paperwork Reduction Act section.

I. Background

On April 21, 2006, the Department issued the Abandoned Plan Regulations.[2] These Regulations facilitate the orderly, efficient termination of abandoned individual account plans by a QTA (described below) in order to give participants and beneficiaries of those plans access to the amounts held in their individual accounts, which are frequently unavailable to them because of the abandonment.[3] Specifically, the Termination of Abandoned Individual Account Plans regulation establishes standards for financial institutions holding the assets of an abandoned individual account plan to terminate the plan and distribute benefits to the plan's participants and beneficiaries, with limited liability. The Safe Harbor for Distributions from Terminated Individual Account Plans regulation provides a fiduciary safe harbor for making distributions from terminated individual account plans on behalf of participants and beneficiaries who fail to make an election regarding the form of benefit distribution after the furnishing of notice. The Special Terminal Report for Abandoned Plans regulation establishes a simplified method for filing a terminal report for abandoned individual account plans.

On that same date, the Department granted PTE 2006–06.[4] This class exemption facilitates the goal of the Abandoned Plan Regulations by permitting a QTA, under the conditions of the exemption, to, among other things, select itself or an affiliate to provide services to the plan, to pay itself or an affiliate fees for those services, and to pay itself fees for services provided prior to the plan's deemed termination, in connection with terminating the abandoned plan.

On October 7, 2008, the Department issued final rules amending the QTA Regulation and the Safe Harbor Regulation.[5] These amendments were made in response to changes to the Internal Revenue Code of 1986 (the Code) enacted as part of the Pension Protection Act of 2006. On that same date, and for the same purpose, PTE 2006–06 was also amended.[6] In this regard, as amended, the class exemption requires that benefits for a missing, designated nonspouse beneficiary be directly rolled over into an inherited individual retirement plan that fully complies with Code requirements.

As noted above, proposed amendments to the Abandoned Plan Regulations are being published simultaneously in this issue of the **Federal Register**. If adopted, these amendments, among other things, would permit a Bankruptcy Trustee to qualify as a QTA under the Abandoned Plan Regulations or to appoint an ''eligible designee'' to act as a QTA under the Abandoned Plan Regulations. Thereafter, the Bankruptcy Trustee or the ''eligible designee'' may provide certain services, pursuant to the requirements set forth in the Abandoned Plan Regulations, in connection with the termination of one or more individual account plans sponsored by the entity that is the subject of the proceeding.

II. Description of the Class Exemption

PTE 2006–06 is comprised of five sections. Section I describes the transactions covered by the exemption. These transactions are divided into two categories. The first category of transactions (hereinafter, Covered Termination Transactions) involve the use by a QTA (described below) of its authority in connection with the termination of an abandoned individual account plan pursuant to the QTA Regulation,[7] to: Select itself or an affiliate to provide services to the plan; receive fees for the services performed as a QTA; and pay itself fees for services provided to the plan prior to the

[2] See the Termination of Abandoned Individual Account Plans at 29 CFR 2578.1 (77 FR 20820 at 20838); the Safe Harbor for Distributions from Terminated Individual Account Plans at 29 CFR 2550.404a-3 (77 FR 20820 at 20850); and Special Terminal Report for Abandoned Plans at 29 CFR 2520.103–13 (77 FR 20820 at 20853).

[3] 77 FR 20820 at *id.*

[4] 71 FR 20856 (Apr. 21, 2006) as amended *infra.*

[5] See 73 FR 58459 at 58462 and 58465.

[6] See 73 FR 58629 (October 7, 2008).

[7] Section I(a) of PTE 2006–06 incorrectly cites the QTA Regulation as Reg. Sec. 2550.404a–3. Section I(a) of this proposed amendment properly cites the QTA Regulation as Reg. Sec. 2578.1.

deemed termination of the plan. The second category of transactions (hereinafter, Covered Distribution Transactions) involves the use by a QTA of its authority in connection with the termination of an abandoned individual account plan pursuant to the QTA Regulation to: (1) Designate itself or an affiliate as: (i) Provider of an individual retirement plan; (ii) provider, in the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, of an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary under the circumstances described in section (d)(1)(ii) of the Safe Harbor Regulation; or (iii) provider of an interest-bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary, in the case of a distribution described in section (d)(1)(iii) of the Safe Harbor Regulation, for the distribution of the account balance of the participant or beneficiary of the abandoned individual account plan who does not provide direction as to the disposition of such assets; (2) make the initial investment of the account balance of the participant or beneficiary in the QTA's or its affiliate's proprietary investment product; (3) receive fees in connection with the establishment or maintenance of the individual retirement plan or other account; and (4) pay itself or an affiliate investment fees as a result of the investment of the individual retirement plan or other account assets in the QTA's or its affiliate's proprietary investment product.

Section II contains conditions applicable to the Covered Termination Transactions. These conditions include the requirement that the fees and expenses paid to the QTA, and its affiliate, for services associated with the termination of a plan and the distribution of its benefits (hereinafter, Termination Services) [8] be consistent with industry rates for such or similar services, based on the experience of the QTA.[9] Section II provides further that the fees and expenses paid to the QTA, and its affiliate, may not exceed the rates ordinarily charged by the QTA (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the QTA regulation, if the QTA (or affiliate) provides the same or similar services to such other customers. Among the remaining conditions set forth in section II is the requirement that, with respect to a Termination Transaction, the requirements of the QTA Regulation are met.

Section III of PTE 2006–06 contains conditions applicable to the Covered Distribution Transactions. These conditions include the requirement that, with respect to a Covered Distribution Transaction, the conditions of the QTA Regulation are met. Section III additionally requires that, in connection with the notice to participants and beneficiaries requirement described in the QTA Regulation, a statement is provided explaining that: (1) If the participant or beneficiary fails to make an election within the 30-day period referenced in the QTA Regulation, the QTA will directly distribute the account balance to an individual retirement plan or other account offered by the QTA or its affiliate; and (2) the proceeds of the distribution may be invested in the QTA's (or affiliate's) own proprietary investment product, which is designed to preserve principal and provide a reasonable rate of return and liquidity. This section of the class exemption requires further that the terms of the individual retirement plan or other account, including the fees and expenses for establishing and maintaining the individual retirement plan or other account, may be no less favorable than those available to comparable individual retirement plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation. Among the remaining conditions set forth in section III is the requirement that the rate of return or the investment performance of the individual retirement plan or other account may be no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable individual retirement plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation.

Section IV contains the recordkeeping requirements for the QTA, and section V defines certain terms that appear in the class exemption. In this last regard, section V(a) currently provides that a termination administrator is ''qualified'' for purposes of the Abandoned Plan Regulations and the class exemption if: (1) The QTA is eligible to serve as a trustee or issuer of an individual retirement plan or other account, within the meaning of section 7701(a)(37) of the Code,[10] and (2) the QTA holds plan assets of the plan considered abandoned. Accordingly, relief under the existing class exemption extends only to entities with experience providing services to plans that are subject to ERISA.

III. Description of the Proposed Amendment to the Class Exemption

When an entity that sponsors an individual account plan is liquidated under chapter 7 of title 11 of the United States Code, a person appointed as a bankruptcy trustee (a Bankruptcy Trustee) will, among other things, perform the obligations that otherwise would have been required of the bankrupt entity. Once appointed, the Bankruptcy Trustee is responsible for administering the plan, which may include taking the steps necessary to terminate the plan and wind up the affairs of the plan. A Bankruptcy Trustee who undertakes these plan responsibilities is a fiduciary with respect to the plan,[11] and therefore subject to section 404 of ERISA.[12] As noted in the preamble to PTE 2006–06, as proposed, a violation of section 406(a) and/or (b) of the Act may occur if the QTA determines to pay itself or an affiliate for services rendered to the plan from the assets of an abandoned

[8] The Department notes that the ''distribution'' services referenced in section II of PTE 2006–06 are distinguishable from the Distribution Transactions described in section I(b) of the class exemption. In this regard, the Distribution Transactions involve the investment of Plan assets in the QTA's proprietary investment vehicles. Section II ''distribution'' services relate to the transfer of Plan assets to Plan participants and/or investment vehicles that are unrelated to the QTA.

[9] See section II(b)(1) of PTE 2006–06.

[10] Section 7701(a)(37) of the Internal Revenue Code describes an ''individual retirement plan'' as an individual retirement account described in section 408(a) of the Code, and an individual retirement account described in section 408(b) of the Code. Section 408(a) of the Code describes the term ''individual retirement account'' as meaning a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, if certain requirements are met. Section 408(b) of the Code describes the term ''individual retirement annuity'' as meaning an annuity contract, or an endowment contract, which meets certain requirements.

[11] In this regard, section 3(21)(A)(i) of ERISA provides that a person is a ''fiduciary'' with respect to a plan to the extent he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets. In addition, section 3(21)(A)(iii) of ERISA provides that a person is a ''fiduciary'' with respect to a plan to the extent he has any discretionary authority or discretionary responsibility in the administration of such plan.

[12] Section 404 of ERISA requires, among other things, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiarity with such matters would use in the conduct of an enterprise of a like character and with like aims.

plan.[13] Also, additional violations may occur if the QTA designates itself or an affiliate as the provider of an individual retirement plan or other account established for the benefit of participants and beneficiaries who do not make an election as to the form of distribution.

As described below, a Bankruptcy Trustee may determine that it is capable of prudently and expeditiously winding down the operations of an individual account plan. However, the relief currently provided by PTE 2006–06 generally does not extend to the provision of Termination Services by a Bankruptcy Trustee to a plan. In this regard, it is the understanding of the Department that Bankruptcy Trustees seldom hold custody of plan assets of the bankrupt plan sponsor. Thus, Bankruptcy Trustees are generally unable to meet the definition of QTA, as set forth in section V(a) of the existing class exemption.

In addition, the provision of Termination Services by a Bankruptcy Trustee to a Plan is often outside the scope of relief intended by the Department for the existing class exemption.[14] In this regard, the class exemption currently limits relief to entities that are eligible to serve as trustees or issuers of individual retirement plans and thus have experience providing services to individual account plans subject to ERISA.[15] As noted above, the existing class exemption requires, among other things, that the fees and expenses paid to a QTA, and its affiliate, for Termination Services are consistent with industry rates, based on the experience of the QTA. This condition may have little or no relevance to Bankruptcy Trustees that have minimal or no experience providing services to ERISA-covered individual account plans.

Nevertheless, the Department recognizes that when the sponsor of an individual account plan is in liquidation pursuant to a Chapter 7 bankruptcy proceeding, participants in the plan benefit to the extent the plan's operations are wound down properly and in an expeditious manner. The Department is proposing this amendment based on its belief that extending relief under the class exemption to Bankruptcy Trustees will enable these Trustees to carry out plan terminations consistent with ERISA and the Department's expectations.

Accordingly, the Department is proposing to expand the definition of QTA to include Bankruptcy Trustees and certain persons designated by such trustees to act as QTAs. Specifically, this new category of QTA is: (1) A person appointed as a bankruptcy trustee pursuant to a liquidation proceeding under chapter 7 of title 11 of the United States Code, or (2) an ''eligible designee'' of such bankruptcy trustee (as described below). Given that a Bankruptcy Trustee may have little or no experience providing services to employee benefit plans, the Department is proposing to modify section II(b)(1) of the class exemption. The modification, which applies only to Bankruptcy Trustee/QTAs and not ''eligible designees'' or other QTAs, eliminates the ''experience of the QTA'' component of the condition. In this regard, section II(b)(1) of this proposed amendment limits the total amount of compensation that may be paid to a Bankruptcy Trustee/QTA (or any affiliate) for Termination Services to an amount that is consistent with industry rates for such or similar services.[16]

The Department notes that compliance with section II(b)(1) of this proposed amendment imposes an obligation on a Bankruptcy Trustee/QTA, prior to performing any Termination Service on behalf of a Plan, to investigate and determine that the fees and expenses proposed to be paid to such Bankruptcy Trustee/QTA are consistent with the amount the Plan would have to pay to an experienced service provider for the same or similar Termination Services. The Department believes that information currently available on the Department's Web site, as described in further detail below, will assist Bankruptcy Trustee/QTAs set fees for Termination Services in the manner required by section II(b)(1) of the proposed exemption. The Department recognizes that a Bankruptcy Trustee, once appointed to administer the termination of a Plan, may seek to appoint the Plan's custodian to provide Termination Services and/or Distribution Services to such Plan.[17] The Department believes that the provision of Termination Services and/or Distribution Services by a plan custodian who has been retained in this manner to act as QTA would be consistent with the intended scope of the existing class exemption. Accordingly, the Department is proposing to expand the definition of QTA to include an ''eligible designee'' of a Bankruptcy Trustee. The proposed amendment defines an ''eligible designee'' to mean any entity appointed by a Bankruptcy Trustee/QTA, who: is eligible to serve as a trustee or issuer of an individual retirement plan; and holds assets of the plan(s) sponsored by the entity that is the subject of the chapter 7 liquidation proceeding. Given that ''eligible designees'' are plan custodians with experience providing services to employee benefit plans subject to ERISA, the Department believes that ''eligible designees'' should be treated in the same manner as QTAs that are not Bankruptcy Trustee/QTAs. In this regard, the proposed amendment permits ''eligible designees'' to engage in all transactions covered by the exemption (i.e., Covered Termination Transactions and/or Covered Distribution Transactions) subject to the same conditions applicable to QTAs other than

[13] In this regard, section 406(a)(1) of the Act prohibits, in part, a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services, or facilities between the plan and a party in interest; and a transfer to, or use by or for the benefit of, a party in interest of any assets of the plan. Section 406(b)(1) and (b)(2) of the Act prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account; and from acting in his individual or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

[14] It is also the understanding of the Department that Bankruptcy Trustees do not maintain proprietary investment vehicles, and thus do not, in the general course of their business activities, offer services associated with the Distribution Transactions. Accordingly, this proposed amendment does not extend relief for a Bankruptcy Trustee/QTA that designates itself or an affiliate to offer such services.

[15] In the preamble to the QTA Regulation, the Department further noted that in developing its criteria for QTAs, the Department limited QTA status to trustees or issuers of an individual account plan within the meaning of section 7701(a)(37) of the Code, because the standards applicable to such trustees and issuers are well understood by the regulated community and the Department is unaware of any problems attributable to weaknesses in the existing Code and regulatory standards for such persons. See 77 FR 20820 at 20821.

[16] This proposed amendment does not affect the obligations under the class exemption of a QTA that is not a Bankruptcy Trustee.

[17] The Department notes that the Act's general standards of fiduciary conduct would apply to this arrangement. In this regard, section 404 of the Act requires, among other things, that Bankruptcy Trustee/QTA discharge his or her duties in a prudent manner. Accordingly, a Bankruptcy Trustee/QTA who appoints an ''eligible designee'' would thereafter be responsible for monitoring the services provided by the ''eligible designee.'' The Department cautions that such monitoring, and the fee associated therewith, must be consistent with, and reflective of, the Plan's interest in having its operations wound down in an expeditious and cost effective manner. In this regard, the rates charged to the Plan by the Bankruptcy Trustee/QTA for monitoring the ''eligible designee'' must reflect the rates charged by a plan fiduciary for similar services, rather than the generally higher fees charged by bankruptcy trustees for legal services provided to the bankruptcy estate.

Bankruptcy Trustee/QTAs. Accordingly, the fees and expenses paid to an ''eligible designee''/QTA pursuant to section II(b)(1) of PTE 2006–06 must be, among other things, based on the experience of such QTA.

The Department reemphasizes to all entities seeking to take advantage of PTE 2006–06 that relief under that class exemption is conditioned upon, among other things, fulfilling the requirements set forth in the QTA Regulation. Accordingly, following a QTA's determination that an individual account plan has been abandoned,[18] the QTA must furnish the Department with a notice that includes, among other things, an identification of any services considered necessary to wind up the plan in accordance with this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator.[19] The Department cautions that, while all such notices are reviewed by the Department, any such notice furnished by a Bankruptcy Trustee/QTA will be subject to additional scrutiny by the Department to ensure that plans pay no more than reasonable compensation for Termination Services.[20] At the beginning of the termination process, the Department conducts a review of the estimated expenses for reasonableness. In this regard, the Department will: Compare the QTA's estimated expenses to those of other QTAs; and consider also the facts and circumstances of the Plan in question. The Department notes that Plans are deemed terminated only after the Department establishes that the fees are reasonable.

In addition, the Department notes that compliance with the QTA Regulation requires that each QTA file a ''Special Terminal Report for Abandoned Plans (STRAP)'' with the Department, and such Report must set forth, among other things, the total termination expenses paid by the plan and a separate schedule identifying each service provider and amount received, itemized by expense.[21] Completed STRAPs are available on the Department's Web site: *http://askebsa.dol.gov/AbandonedPlanSearch/UI/QTASearchResults.aspx.* The Department expects that the information contained in these completed STRAPs, including the itemized fees set forth therein, will assist Bankruptcy Trustee/QTAs set fees for Termination Services in the manner required by section II(b)(1) of the proposed exemption. For further assistance regarding QTA participation in the abandoned plan program, Bankruptcy Trustee/QTAs may contact the EBSA office for the region where the abandoned plan is located.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) If granted, this proposed amendment does not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an amendment may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the amendment is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) If granted, the amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 2006–06, effective as of the date the adopted amendment is published in the **Federal Register**. The entire exemption, as proposed to be amended, is set forth below:

I. Covered Transactions

(a) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a QTA (as defined in paragraph (a)(1) or (a)(2) of section V) using its authority in connection with the termination of an abandoned individual account plan pursuant to the Department's regulation at 2578.1, relating to the Termination of Abandoned Individual Account Plans (the QTA Regulation) to:

(1) Select itself or an affiliate to provide services to the plan;

(2) Receive fees for the services performed as a QTA; and

(3) Pay itself fees for services provided to the plan prior to the deemed termination of the plan, provided that the conditions set forth in sections II and IV of this exemption are satisfied.

(b) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a QTA (as defined in paragraph (a)(1) or (a)(2)(ii) of section V) using its authority in connection with the termination of an abandoned individual account plan pursuant to the QTA Regulation to:

(1) Designate itself or an affiliate as: (i) Provider of an individual retirement plan; (ii) provider, in the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, of an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary under the circumstances described in

[18] The Proposed Amendment to the QTA Regulation provides that if an individual account plan's sponsor is in liquidation under chapter 7 of title 11 of the United States Code, the plan may be considered abandoned upon the entry of an order for relief, and the bankruptcy trustee, or an eligible designee, shall be the qualified termination administrator. See Paragraph (j)(1) of the Proposed Amendment to the QTA Regulation.

[19] See paragraph (c)(3)(iii) of the QTA Regulation.

[20] Paragraph (d)(2)(v) of the QTA Regulation provides, among other things, that expenses of plan administration shall be considered reasonable to the extent such expenses are consistent with industry rates for such or similar services.

[21] See DOL Reg. Sec. 2520.103–13(b)(3).

section (d)(1)(ii) of the Safe Harbor Regulation for Terminated Plans (29 CFR section 2550.404a–3) (the Safe Harbor Regulation); or (iii) provider of an interest bearing, federally insured bank or savings association account maintained in the name of the participant or beneficiary, in the case of a distribution described in section (d)(1)(iii) of the Safe Harbor Regulation, for the distribution of the account balance of the participant or beneficiary of the abandoned individual account plan who does not provide direction as to the disposition of such assets;

(2) Make the initial investment of the account balance of the participant or beneficiary in the QTA's or its affiliate's proprietary investment product;

(3) Receive fees in connection with the establishment or maintenance of the individual retirement plan or other account; and

(4) Pay itself or an affiliate investment fees as a result of the investment of the individual retirement plan or other account assets in the QTA's or its affiliate's proprietary investment product, provided that the conditions set forth in sections III and IV of this exemption are satisfied.

II. Conditions for Provision of Termination Services and Receipt of Fees in Connection Therewith

(a) The requirements of the QTA Regulation are met. The QTA provides, in a timely manner, any other reasonably available information requested by the Department regarding the proposed termination.

(b) Fees and expenses paid to the QTA, and its affiliate, in connection with the termination of the plan and the distribution of benefits:

(1) Are consistent with industry rates for such or similar services, based on the experience of the QTA, and

(2) Are not in excess of rates ordinarily charged by the QTA (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the QTA regulation, if the QTA (or affiliate) provides the same or similar services to such other customers. Notwithstanding the foregoing, solely with respect to a QTA described in section V(a)(2)(i) of this proposed class exemption, the requirement set forth in (b)(1) of this paragraph shall be deemed met to the extent that the fees and expenses paid to such QTA are: (i) For services necessary to wind-up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries; and (ii) consistent with industry rates for such or similar services ordinarily charged by QTAs described in section V(a)(1)(i);

(c) In the case of a transaction described in section I(a)(3):

(1) Such services: (i) Were performed in good faith pursuant to the terms of a written agreement executed prior to the service provider becoming a QTA; or (ii) were performed pursuant to the QTA Regulation; and

(2) The QTA, in the initial notification of plan abandonment described in section (c)(3) of the QTA Regulation: (i) Represents under penalty of perjury that such services were actually performed; and (ii) in the case of section II(c)(1)(i) above, provides the Department with a copy of the executed contract between the QTA and a plan fiduciary or the plan sponsor that authorized such services.

III. Conditions for Distributions

(a) The conditions of the QTA Regulation are met.

(b) In connection with the notice to participants and beneficiaries described in the QTA Regulation, a statement is provided explaining that:

(1) If the participant or beneficiary fails to make an election within the 30-day period referenced in the QTA Regulation, the QTA will directly distribute the account balance to an individual retirement plan or other account offered by the QTA or its affiliate;

(2) The proceeds of the distribution may be invested in the QTA's (or affiliate's) own proprietary investment product, which is designed to preserve principal and provide a reasonable rate of return and liquidity.

(c) The individual retirement plan or other account is established and maintained for the exclusive benefit of the individual retirement plan account holder or other account holder, his or her spouse, or their beneficiaries.

(d) The terms of the individual retirement plan or other account, including the fees and expenses for establishing and maintaining the individual retirement plan or other account, are no less favorable than those available to comparable individual retirement plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation.

(e) Except in the case of a QTA providing a bank or savings account pursuant to section I(b)(1)(iii) of the exemption, the distribution proceeds are invested in an Eligible Investment Product(s), as defined in section V(c) of this class exemption.

(f) The rate of return or the investment performance of the individual retirement plan or other account is no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable individual retirement plans or other accounts established for reasons other than the receipt of a distribution described in the QTA Regulation.

(g) The individual retirement plan or other account does not pay a sales commission in connection with the acquisition of an Eligible Investment Product.

(h) The individual retirement plan account holder or other account holder must be able, within a reasonable period of time after his or her request and without penalty to the principal amount of the investment, to transfer his or her account balance to a different investment offered by the QTA or its affiliate, or to a different financial institution not related to the QTA or its affiliate.

(i)(1) Fees and expenses attendant to the individual retirement plan or other account, including the investment of the assets of such plan or account, (e.g., establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the QTA for comparable individual retirement plans or other accounts established for reasons other than the receipt of a distribution made pursuant to the QTA Regulation;

(2) Fees and expenses attendant to the individual retirement plan or other account, with the exception of establishment charges, may be charged only against the income earned by the individual retirement plan or other account; and

(3) Fees and expenses attendant to the individual retirement plan or other account are not in excess of reasonable compensation within the meaning of section 4975(d) (2) of the Code.

IV. Recordkeeping

(a) The QTA maintains or causes to be maintained, for a period of six (6) years from the date the QTA provides notice to the Department of its determination of plan abandonment and its election to serve as the QTA described in the QTA Regulation, the records necessary to enable the persons described in paragraph (b) of this section to determine whether the applicable conditions of this exemption have been met. Such records must be readily available to assure accessibility by the persons identified in paragraph (b) of this section.

(b) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this section are unconditionally

available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; and

(2) Any account holder of an individual retirement plan or other account established pursuant to this exemption, or any duly authorized representative of such account holder.

(c) A prohibited transaction will not be considered to have occurred if due to circumstances beyond the control of the QTA, the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of the exemption have been met are lost or destroyed, and no party in interest other than the QTA shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b).

(3) None of the persons described in paragraph (b)(2) of this section shall be authorized to examine the trade secrets of the QTA or its affiliates or commercial or financial information that is privileged or confidential.

V. Definitions

(a) A termination administrator is ''qualified'' for purposes of the QTA Regulation and this proposed amendment if the requirements set forth in either subparagraph (1) or (2) below are met:

(1)(i) The QTA is eligible to serve as a trustee or issuer of an individual retirement plan or other account, within the meaning of section 7701(a)(37) of the Code, and (ii) The QTA holds plan assets of the plan that is considered abandoned; or

(2)(i) The QTA is a bankruptcy trustee in a liquidation proceeding under chapter 7 of title 11 of the United States Code with responsibility under 11 U.S.C 704(a)(11) to administer one or more individual account plans sponsored by the entity that is the subject of the proceeding, or (ii) The QTA is an ''eligible designee,'' as defined in section V(h) below, of such bankruptcy trustee.

(b) The term ''individual retirement plan'' means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of section III of this exemption, the term ''individual retirement plan'' shall also include an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive a distribution on behalf of a nonspouse beneficiary. Notwithstanding the foregoing, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

(c) The term ''Eligible Investment Product'' means an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution as defined in paragraph (d) of this section and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan or other account. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes ''stable value products'' issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder or other account holder, i.e., that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder or other account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder access to the individual retirement plan or other account's assets.

(d) The term ''Regulated Financial Institution'' means an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

(e) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or

(2) Any officer, director, partner or employee of the person.

(f) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term ''individual account plan'' means an individual account plan as that term is defined in section 3(34) of the Act.

(h) The term ''eligible designee'' means any person or entity designated by a QTA described in section V(a)(2)(i) that is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and that holds assets of a plan described in section V(a)(2)(i).

Signed at Washington, DC, September, 2012.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, and 2578

RIN 1210–AB47

Amendments to the Abandoned Plan Regulations

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulations.

SUMMARY: This document contains proposed amendments to three regulations previously published under the Employee Retirement Income Security Act of 1974 that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The principal amendments propose to permit bankruptcy trustees to use the Department's Abandoned Plan Program to terminate and wind up the plans of sponsors in liquidation under chapter 7 of the U.S. Bankruptcy Code. In addition, other technical amendments are proposed to improve the operation of the regulations. If adopted, the amendments would affect employee benefit plans, primarily small defined contribution plans, participants and beneficiaries, service providers, and individuals appointed to serve as trustees under chapter 7 of the U.S. Bankruptcy Code.

DATES: Written comments should be received by the Department of Labor on or before February 11, 2013.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Comments may be submitted to the Department of Labor, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov*. Include RIN 1210–AB47 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Abandoned Plans.

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking (RIN 1210–AB47). Comments received will be made available to the public, posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Stephanie Ward Cibinic or Melissa R. Dennis, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

Pursuant to Executive Order 13563, this section of the preamble contains an executive summary of the rulemaking and related prohibited transaction class exemption (published elsewhere in the notice section of today's **Federal Register**) in order to promote public understanding and to ensure an open exchange of information and perspectives. Sections B through G of this preamble, below, contain a more detailed description of the regulatory provisions and need for the rulemaking as well as its costs and benefits.

1. Purpose of Regulatory Action

In 2006, the Department of Labor (the Department) issued regulations establishing a program to facilitate the termination of and distribution of benefits from individual account plans that have been abandoned by their sponsors. In conjunction with the regulations, the Department also issued a class exemption that permits certain transactions associated with these types of terminations and distributions. The regulations and the class exemption (hereinafter referred to collectively as the Abandoned Plan Program or Abandoned Plan Regulations, unless otherwise indicated) currently are not available to plans whose sponsors are in liquidation under chapter 7 of the U.S. Bankruptcy Code (hereinafter referred to as chapter 7 plans). Since the establishment of the Abandoned Plan Program, on-going challenges associated with terminating and winding up chapter 7 plans have persuaded the Department that the Abandoned Plan Program should be expanded. This proposed rulemaking, along with the proposed amendments to the related class exemption, would help abate these challenges by making the Abandoned Plan Program available to bankruptcy trustees who, under the U.S. Bankruptcy Code, may have responsibility for administering such plans. The Secretary of Labor would make these amendments under her authority at section 505 of ERISA to prescribe such regulations as she finds necessary or appropriate to carry out the statute's provisions. The Secretary also has the authority to issue exemptions from ERISA's prohibited transaction rules in accordance with section 408(a) of ERISA and section 4975(c)(2) of the Internal Revenue Code and pursuant to the exemption procedures established in 29 CFR part 2570, subpart B.

2. Summary of Major Provisions

The major provisions of this rulemaking include the proposed amendments contained in paragraph (j) of proposed 29 CFR 2578.1. Pursuant to these proposed amendments, chapter 7 plans would be considered abandoned upon the Bankruptcy Court's entry of an order for relief with respect to the plan sponsor's bankruptcy proceeding. The bankruptcy trustee or a designee would be eligible to terminate and wind up such plans under procedures similar to those provided under the Department's current Abandoned Plan Regulations. If the bankruptcy trustee winds up the plan under the Abandoned Plan Program, the trustee's expenses would have to be consistent with industry rates for similar services ordinarily charged by qualified termination administrators that are not bankruptcy trustees. The proposed amendment to the class exemption would permit bankruptcy trustees, as with qualified termination administrators under the current Abandoned Plan Regulations, to pay themselves from the assets of the plan (a prohibited transaction) for terminating and winding up a chapter 7 plan under an industry rates standard.

3. Summary of Costs and Benefits

The Department estimates that the costs attributable to amending the Abandoned Plan Program to cover chapter 7 plans will be $64,000 annually. The Department believes the benefits of expanding the program will significantly outweigh the costs. Expanding the program will encourage the orderly and efficient termination of chapter 7 plans and distribution of account balances, thereby enhancing the retirement income security of participants and beneficiaries in these plans. Absent the standards and procedures set forth in the amendments, some bankruptcy trustees may lack the

necessary guidance to properly update plan records, calculate account balances, select and monitor service providers, distribute benefits, pay fees/expenses, and otherwise efficiently terminate and wind up chapter 7 plans. In addition, significant cost savings would result from the amendments because chapter 7 plans no longer would incur costly audit fees required to file the Form 5500 Annual Return/Report. The Department's full cost/benefit analysis is set forth below in Section G of this preamble, entitled ''Regulatory Impact Analysis.''

B. Background

On April 21, 2006, the Department of Labor (the Department) issued three regulations (the Abandoned Plan Regulations) that collectively facilitate the orderly, efficient termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.[1] The first of these regulations, codified at 29 CFR 2578.1, establishes standards for determining when individual account plans may be considered ''abandoned'' and procedures by which financial institutions (so-called ''qualified termination administrators'' or ''QTAs'') holding the assets of such plans may terminate the plans and distribute benefits to participants and beneficiaries, with limited liability under title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002 et seq. The second regulation, codified at 29 CFR 2550.404a–3, provides a fiduciary safe harbor for qualified termination administrators to make distributions on behalf of participants and beneficiaries who fail to elect a form of benefit distribution (these participants and beneficiaries are sometimes referred to as missing participants or beneficiaries). The third regulation, codified at 29 CFR 2520.103–13, establishes a simplified method for filing a terminal report for abandoned individual account plans. Also on April 21, 2006, the Department granted a prohibited transaction exemption, PTE 2006–06, which facilitates the goal of the Abandoned Plan Regulations by permitting a qualified termination administrator, who meets the conditions in the exemption, to, among other things, select itself or an affiliate to carry out the termination and winding up activities specified in the Abandoned Plan Regulations, and to pay itself or an affiliate fees for those services.[2]

For the reasons set forth in the 2006 preamble, the Abandoned Plan Regulations strictly limit who may be a qualified termination administrator.[3] Specifically, in order to be a qualified termination administrator, an entity, first, must be eligible to serve as a trustee or issuer of an individual retirement plan within the meaning of section 7701(a)(37) of the Internal Revenue Code (Code) and, second, must hold assets of the plan on whose behalf it will serve as the qualified termination administrator.[4] As a result of these conditions, bankruptcy trustees ordinarily do not qualify as qualified termination administrators under the Abandoned Plan Regulations. This fact was acknowledged when the Department published the Abandoned Plan Regulations in 2006.[5]

However, for several reasons, the Department is revisiting its earlier decision to preclude bankruptcy trustees from serving as qualified termination administrators. Pursuant to 11 U.S.C. 704(a)(11), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109–8, 119 Stat. 23, when an entity that sponsors an individual account plan is liquidated under chapter 7 of title 11 of the United States Code, the court administering the liquidation proceeding (and/or U.S. Trustee) will appoint a bankruptcy trustee to, among other things, continue to perform the obligations that would otherwise be required of the bankrupt entity with respect to the plan. Therefore, the bankruptcy trustee often is responsible for administering the plan, which may include taking the steps necessary to terminate the plan, wind up the affairs of the plan, and distribute plan benefits.[6] While the U.S. Bankruptcy Code imposes these obligations on bankruptcy trustees, it does not provide guidance or standards for carrying out such activities.

The Department believes that when the sponsor of an individual account plan is in liquidation in a chapter 7 bankruptcy case, the plan should be terminated and wound up in an orderly and efficient manner. However, in bankruptcy cases, as with abandoned plans generally, usually the sponsor is not in a position to carry out this function. Although the trustee of the sponsor's bankruptcy estate has the requisite legal authority, the Department has observed that such trustees may be unaware of their responsibilities and often are unfamiliar with ERISA, or how properly to terminate and wind up a plan. The frequent result is delay in distributing benefits to participants and beneficiaries and excessive cost to the plan.

In the Department's view, a bankruptcy trustee responsible for administering a chapter 7 debtor's employee benefit plan is a fiduciary with respect to the plan for purposes of ERISA. Thus, when taking steps to wind up the affairs of the plan, the trustee must act consistently with ERISA's fiduciary standards. The Department is proposing these regulations (which are in the form of amendments to the Abandoned Plan Regulations), and the accompanying prohibited transaction exemption amendment, in order to provide a process for the bankruptcy trustee to terminate the plan, distribute benefits to participants and beneficiaries, and pay necessary expenses, including to itself, in a manner that helps the bankruptcy trustee meet its fiduciary obligations.

C. Overview of Proposed Rulemaking

In general, this rulemaking proposes to extend the basic framework of the Abandoned Plan Regulations to plans (i.e., chapter 7 plans) whose sponsors are undergoing liquidation under chapter 7 of title 11 of the United States Code.[7] The provisions of the existing

[1] 71 FR 20820. See also 73 FR 58459 for subsequent amendments with regard to distributions on behalf of a missing non-spouse beneficiary.

[2] 71 FR 20855.

[3] See 71 FR 20821 (''given the authority and control over plans vested in QTAs under the regulation, QTAs must be subject to standards and oversight that will reduce the risk of losses to the plans' participants and beneficiaries'').

[4] Section 7701(a)(37) of the Code describes an ''individual retirement plan'' as an individual retirement account described in section 408(a) of the Code, and an individual retirement annuity described in section 408(b) of the Code. Section 408(a) of the Code describes the term ''individual retirement account'' as meaning a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, if certain requirements are met. Section 408(b) of the Code describes the term ''individual retirement annuity'' as meaning an annuity contract, or an endowment contract, which meets certain requirements.

[5] For example, in responding to commenters who argued in favor of conferring qualified termination administrator status on bankruptcy trustees in liquidation cases when the debtor also is the plan administrator, the Department, in the preamble to the Abandoned Plan Regulations, stated its view at that time that such individuals are empowered by virtue of their appointment to take the steps necessary to terminate and wind up the affairs of a plan and, therefore, do not need the authority conferred by the Abandoned Plan Regulations. See 71 FR 20821.

[6] A bankruptcy trustee who undertakes these plan responsibilities is a fiduciary within the meaning of section 3(21) of ERISA.

[7] The proposed extension is limited to plans whose sponsors entered liquidation under chapter 7 of title 11 of the United States Code on the theory that such plans are effectively being abandoned by the sponsor as a result of the liquidation. Nonetheless, the Department requests comment on

Abandoned Plan Regulations would apply to chapter 7 plans in much the same way they apply now to abandoned plans, except to the extent that they are modified by this proposal to reflect fundamental differences between abandoned plans and chapter 7 plans. In this regard, the most significant amendments to the existing Abandoned Plan Regulations are contained in proposed paragraph (j) of 29 CFR 2578.1. Other less significant or conforming amendments are needed to other parts of § 2578.1 and to the other two regulations (§ 2550.404a–3 and § 2520.103–13) constituting the Abandoned Plan Regulations. Section D of this preamble describes the major proposed changes (the so-called chapter 7 amendments) to the Abandoned Plan Regulations. This rulemaking, however, also proposes to make certain technical changes to the Abandoned Plan Regulations that are unrelated to chapter 7 plans. These amendments are discussed in section E of this preamble. Section F of this preamble discusses the results of the Department's consultation on this proposal with the Internal Revenue Service. Section G contains a detailed Regulatory Impact Analysis. For purposes of readability, the proposed rulemaking republishes the Abandoned Plan Regulations in their entirety, as revised, rather than the specific amendments only.

D. Special Rules for Chapter 7 Plans

1. Discussion of Major Changes to 29 CFR 2578.1—Termination of Abandoned Individual Account Plans

(a) In General

Proposed paragraph (j) of § 2578.1 contains the special rules for chapter 7 plans. This paragraph contains four subparagraphs. Subparagraph (1) sets forth rules for when such plans may be considered abandoned and who may serve as qualified termination administrators. These rules are in lieu of the general rules in paragraphs (b) and (g) of § 2578.1, which do not apply to chapter 7 plans. Subparagraph (2) sets forth the content requirements for the notice of plan abandonment that qualified termination administrators of chapter 7 plans must send to the Department. These content requirements are in lieu of the content requirements in paragraph (c)(3) of § 2578.1, which apply to abandoned plans in general. Subparagraph (3) sets forth special rules for winding up chapter 7 plans. These special rules are in lieu of some, but not all, of the winding up procedures in paragraph (d) of § 2578.1. Subparagraph (4) contains a rule of accountability that is applicable to bankruptcy trustees. The requirements of each of these subparagraphs are described in detail below.

(b) Timing of Abandonment

Proposed paragraph (j)(1)(i) is a timing rule. It provides that a chapter 7 plan shall be considered abandoned upon the entry of an order for relief. No other findings must be made. The bankruptcy trustee then may establish itself or an eligible designee as the qualified termination administrator. Whether to establish itself or an eligible designee as the qualified termination administrator is optional on the part of the bankruptcy trustee. Abandonment status, on the other hand, is not optional; it is achieved by operation of law upon the entry of an order for relief. Proposed paragraph (j)(1)(i) contains a limitation on this status. If at any time before the plan is deemed terminated (plans generally will be deemed to be terminated on the ninetieth (90th) day following the date of the letter from EBSA acknowledging receipt of the notice of plan abandonment), the plan sponsor's chapter 7 proceeding is dismissed or converted to a proceeding under chapter 11 of title 11 of the United States Code, the plan shall not be considered abandoned pursuant to paragraph (j)(1).[8] The Department believes that a plan should not be considered abandoned merely because its sponsor is in reorganization.[9]

(c) Who May Serve as a Qualified Termination Administrator

Proposed paragraph (j)(1)(ii) makes it clear that bankruptcy trustees may serve as qualified termination administrators even if they do not satisfy the rule in paragraph (g) of § 2578.1 that allows only large financial institutions and other asset custodians described in section 7701(a)(37) of the Code to be qualified termination administrators. Except as provided in paragraph (j), a bankruptcy trustee serving as qualified termination administrator would follow the same termination and winding-up procedures in the Abandoned Plan Regulations as would any other qualified termination administrator. The proposal also allows a bankruptcy trustee the option of designating someone else to serve as the qualified termination administrator. In this regard, however, the proposal strictly limits who the bankruptcy trustee may designate. Proposed paragraph (j)(1)(ii) provides that an ''eligible designee'' is any person or entity designated by the bankruptcy trustee that is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Code, and that holds assets of the chapter 7 plan. Thus, an eligible designee could be the plan's asset custodian at the time of abandonment or another entity chosen later by the bankruptcy trustee.[10] The bankruptcy trustee would be responsible for the selection and monitoring of any eligible designee in accordance with section 404(a)(1) of ERISA.

(d) Notice of Abandonment

Proposed paragraph (j)(2) provides that, in accordance with the deemed termination provisions in paragraph (c)(1) and (c)(2) of § 2578.1, the qualified termination administrator must furnish to the Department a notice of plan abandonment that meets the content requirements in paragraph (j)(2). This notice essentially is the same as the notice of plan abandonment described in paragraph (c)(3) of § 2578.1 except for modifications that take into account information specific to chapter 7 plans and bankruptcy trustees. A proposed model ''Notification of Plan Abandonment and Intent to Serve as Qualified Termination Administrator'' reflecting the content requirements of proposed paragraph (j)(2) is being added for chapter 7 plans as Appendix C. Therefore, Appendices C and D have been re-proposed as Appendix D and Appendix E respectively. Paragraph (j)(2)(i) provides that the notice must include the name and contact information of the bankruptcy trustee and, if applicable, the name and contact information of the eligible designee acting as the qualified termination

whether there are other similar situations that could or should be covered by the Abandoned Plan Regulations. For example, should the Regulations cover plans whose sponsors are undergoing liquidation under a chapter 11 plan of liquidation? Should the Regulations cover situations when a plan's sponsor enters receivership pursuant to applicable state or federal law (e.g., FDIC receivership)? If the Regulations should be extended to situations beyond the situations covered by the proposed extension, please specifically identify the situation, why the situation should be covered, the costs and benefits of covering the situation, and, if applicable, any state or federal law relevant to the situation.

[8] On the other hand, a plan would not cease to be considered abandoned under proposed paragraph (j)(1) if the sponsor's chapter 7 proceeding is converted to a proceeding under chapter 11 after the plan is deemed terminated. In such circumstances, the qualified termination administrator would be expected to continue winding up the affairs of the plan in accordance with the Abandoned Plan Regulations.

[9] But see note 7.

[10] Any eligible designee should be selected and holding the assets of the chapter 7 plan by the time of the furnishing of the notice of plan abandonment to the Department under paragraph (j)(2) of the proposed amendments.

administrator pursuant to proposed paragraph (j)(1). Paragraph (j)(2)(ii) requires information about the chapter 7 plan that the qualified termination administrator is winding up. Paragraph (j)(2)(iii) requires a statement that the plan is considered to be abandoned due to an entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code, and a copy of the notice or order entered in the case reflecting the bankruptcy trustee's appointment to administer the plan sponsor's chapter 7 case. Paragraph (j)(2)(iv)(A) and (B) require the estimated value of the plan's assets as of the entry of an order for relief; the name, employer identification number (EIN), and contact information for the entity holding the plan's assets; and the length of time plan assets have been held by such entity, if held for less than 12 months. Paragraph (j)(2)(iv)(C) and (D) require identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets, and an identification of known delinquent contributions. Paragraph (j)(2)(v) requires the name and contact information of known service providers to the plan. It also requires an identification of any services considered necessary to wind up the plan, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses for winding up services expected to be paid out of plan assets by the qualified termination administrator. Paragraph (j)(2)(vi) requires a statement indicating that the information provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(e) Winding-Up Procedures

(i) In General

Paragraph (d) of § 2578.1 sets forth specific steps that a qualified termination administrator must take to wind up an abandoned plan and, with respect to most such steps, the standards applicable to carrying out the particular activity. Under the proposal, paragraph (d) applies to chapter 7 plans except as modified by the provisions in proposed paragraph (j)(3).

(ii) Delinquent Contributions

Proposed paragraph (j)(3)(i) contains a conditional requirement to collect delinquent contributions. Specifically, this paragraph provides that the qualified termination administrator of a chapter 7 plan shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with collection. If the bankruptcy trustee designates an eligible designee as defined in proposed paragraph (j)(1)(ii), the bankruptcy trustee shall at the time of such designation notify the eligible designee of any known delinquent contributions. This collection requirement includes both participant contributions withheld from employee paychecks, but not forwarded by the debtor to the plan, as well as delinquent employer contributions owed by the debtor. This collection requirement applies to any qualified termination administrator to a chapter 7 plan whether it is a bankruptcy trustee or an eligible designee.[11]

The Department's present belief is that bankruptcy trustees, by virtue of their knowledge and control of the debtor's estate and of the debtor's ERISA plan, are in the best position both to know of the liquidating sponsor's delinquent contribution debts to the plan and to collect these delinquencies (or to notify the eligible designee so that it can collect them). However, the Department is interested in knowing whether, and under what circumstances, the qualified termination administrator's duty to collect would unavoidably conflict with any duties the bankruptcy trustee may have under the U.S. Bankruptcy Code as the representative of the debtor's estate. Please be specific about when, if ever, such conflicts might arise, whether and why such conflicts are disabling, and the specific provisions of the U.S. Bankruptcy Code that impose the conflicting obligations.

(iii) Reporting Fiduciary Breaches

Proposed paragraph (j)(3)(ii) contains a requirement to report activity to the Department that may be evidence of fiduciary breaches by prior plan fiduciaries. Specifically, the qualified termination administrator of a chapter 7 plan (whether a bankruptcy trustee or eligible designee) must report known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets. Thus, for example, evidence of embezzlement by a prior plan fiduciary would be required to be reported. The proposal limits the reporting requirement to evidence of any fiduciary breaches that ''involve plan assets'' by a prior plan fiduciary. This limitation is intended to prevent a reporting requirement when no plan assets are involved. The Department intends to use this information to pursue and remedy fiduciary breaches where appropriate. Beyond this reporting requirement, a qualified termination administrator to a chapter 7 plan ordinarily will have no further obligations under the Abandoned Plan Regulations with respect to such prior breaches, except with respect to collecting delinquent contributions owed to the plan.[12]

Information concerning fiduciary breaches must be reported in conjunction with the filing of the notice of plan abandonment (paragraph (j)(2)) or the final notice (paragraph (d)(2)(ix)). If the qualified termination administrator uses the model notices, such information may be included in the sections designated for other information. If the bankruptcy trustee designates an eligible designee, the bankruptcy trustee must provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibility to report information about fiduciary breaches. In the case of an eligible designee, if after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information not already reported in the notification required in paragraphs (j)(2) or (d)(2)(ix) that it believes may be evidence of fiduciary breaches that involve plan assets by a prior plan fiduciary, the bankruptcy trustee must report such activity to EBSA in a time and manner specified in instructions developed by EBSA's Office of Enforcement. This supplemental reporting requirement is needed to address circumstances when

[11] Under this provision, an eligible designee's duty to collect delinquent contributions is limited expressly to those delinquent contributions it knows about based on the information provided by the bankruptcy trustee at the time of the designation. Thus, an eligible designee would have no duty to collect delinquent contributions if the bankruptcy trustee failed to disclose them to the eligible designee. Nothing in this section imposes an obligation on the eligible designee to conduct an inquiry or review to determine whether there are delinquent contributions with respect to the plan. See § 2578.1(e)(2).

[12] As discussed above, proposed paragraph (j)(3)(i) imposes on a qualified termination administrator to a chapter 7 plan a conditional duty to collect delinquent contributions.

the bankruptcy trustee discovers information concerning fiduciary breaches after the eligible designee has completed the termination and winding up process.

(iv) Notification and Distribution Requirements

The notification and distribution requirements applicable to chapter 7 plans under the proposal essentially are the same as the notification and distribution requirements applicable to non-chapter 7 plans under the existing Abandoned Plan Regulations, except as follows. First, proposed paragraph (j)(3)(iii) adds a requirement that participants must be informed that plan termination has occurred as a result of liquidation under the U.S. Bankruptcy Code. Second, proposed paragraph (j)(3)(iv) adds a requirement that the Department must receive certain information about the identity of the bankruptcy trustee and, if applicable, the eligible designee.

Third, proposed paragraph (j)(3)(v) does not grant a bankruptcy trustee the ability to designate itself or an affiliate as the transferee of distribution proceeds. The Abandoned Plan Regulations provide that qualified termination administrators must distribute benefits in accordance with the form of distribution elected by the participant or beneficiary, and when the participant or beneficiary fails to make an election, the qualified termination administrator has the ability to designate itself or an affiliate as the transferee of the distribution proceeds. (See paragraph (d)(2)(vii)(C) of § 2578.1.) Typically this would occur where the qualified termination administrator has its own proprietary investment vehicle, such as an individual retirement plan within the meaning of section 7701(a)(37) of the Code. The proposal does not extend this option to bankruptcy trustees based on the Department's understanding that bankruptcy trustees do not maintain proprietary investment vehicles within the meaning of section 7701(a)(37) of the Code.

(v) Payment of Reasonable Fees

Proposed paragraph (j)(3)(vi) addresses fees that a bankruptcy trustee may pay to itself, or others, from the plan's assets in connection with following the termination and winding-up procedures in the proposed amendments. Subparagraph (A) of paragraph (j)(3)(vi) contains the applicable standard in cases where the bankruptcy trustee is the qualified termination administrator. Subparagraph (B) of paragraph (j)(3)(vi) contains the applicable standard in cases when the bankruptcy trustee appoints an eligible designee to serve as the qualified termination administrator.[13] The different standards in these subparagraphs are needed for two reasons: first, expense rates normally charged by bankruptcy trustees for administering estates of chapter 7 debtors may not be appropriate for purposes of carrying out the duties and responsibilities under the proposed amendments with respect to ERISA plans, and second, bankruptcy trustees are not likely to have significant experience in terminating and winding up the affairs of such plans. Finally, subparagraph (C) of paragraph (j)(3)(vi) regulates payments to the bankruptcy trustee by the eligible designee.

Pursuant to proposed paragraph (j)(3)(vi)(A), the qualified termination administrator (i.e., when the bankruptcy trustee is the QTA) is permitted to pay, from plan assets, no more than the reasonable expenses of carrying out his or her authority and responsibility under the proposed amendments. Expenses of plan administration shall be considered reasonable if they are for services necessary to wind up the affairs of the plan and distribute benefits (see § 2578.1(d)(2)(v)(B)(*1*)), if they are consistent with industry rates for the same or similar services ordinarily charged by qualified termination administrators who are not bankruptcy trustees (see proposed paragraph (j)(3)(vi)(A)), and if their payment would not constitute a prohibited transaction (see § 2578.1(d)(2)(v)(B)(*3*)). This standard is intended to make clear that bankruptcy trustees should look to the rates ordinarily charged by qualified termination administrators who are not bankruptcy trustees, e.g., banks and other asset custodians. Samples of these rates are available to the public in filings made to the Department.[14] These filings may be a helpful source of information for bankruptcy trustees.

The standard in proposed paragraph (j)(3)(vi)(A) (i.e., that expenses must be consistent with industry rates for the same or similar services ordinarily charged by qualified termination administrators who are not bankruptcy trustees) is intended to provide clarity and flexibility with respect to decisions regarding fee and expense payments by bankruptcy trustees who elect to be qualified termination administrators. In determining these fees and expenses, bankruptcy trustees still will have to make an inquiry into, and objectively determine, whether any particular fee or expenditure is reasonable using the standard in proposed paragraph (j)(3)(vi)(A). In this regard, the Department specifically requests comments on whether proposed paragraph (j)(3)(vi)(A) provides sufficient clarity as to the type and amount of fees and expenses that may be paid from plan assets in connection with terminating and winding up a plan under this proposal. For example, will bankruptcy trustees have difficulty determining industry rates for termination and winding up services despite the public filings mentioned above? Are these filings searchable in a helpful way to bankruptcy trustees? If proposed paragraph (j)(3)(vi)(A) does not provide sufficient clarity, please explain why not and identify any alternatives that should be considered by the Department.

Proposed paragraph (j)(3)(vi)(C) provides that an eligible designee may pay from plan assets to a bankruptcy trustee the reasonable expenses that the bankruptcy trustee incurs in selecting and monitoring the eligible designee. This provision follows from the requirement in proposed paragraph (j)(1)(ii) that the bankruptcy trustee is responsible for the selection and monitoring of the eligible designee. Whether an expense is ''reasonable'' ordinarily depends on the facts and circumstances surrounding the particular expense. However, the Department notes that the rates charged to the plan by the bankruptcy trustee for selecting and monitoring the eligible designee are to be judged in relation to the rates charged by a plan fiduciary for similar services, rather than the generally higher fees charged by bankruptcy trustees for legal services provided to the bankruptcy estate. In any event, pursuant to proposed paragraph (j)(3)(vi)(C), the eligible designee would apply the rules in paragraph (d)(2)(v) of § 2578.1 in determining whether the payment to the bankruptcy trustee for monitoring services is reasonable. While the Department believes that it would be appropriate for bankruptcy trustees to expect remuneration for providing monitoring services, the Department

[13] Proposed paragraph (j)(3)(vi)(B) merely confirms that an eligible designee may use the more generally applicable safe harbor at paragraph (d)(2)(v) of § 2578.1 without the special modifications contained in proposed paragraph (j)(3)(v)(A) for bankruptcy trustees.

[14] Under § 2520.103–13, qualified termination administrators must file the Special Terminal Report for Abandoned Plans (STRAP). STRAPs contain total termination expenses paid by a plan and a separate schedule identifying each service provider and the amount received by that service provider, itemized by expense. STRAPs currently are available on the Department's Web site (see *http://askebsa.dol.gov/AbandonedPlanSearch/UI/QTASearchResults.aspx).*

intends to review closely such remuneration to ensure that arrangements under the proposed amendments are not contrary to the interests of participants and beneficiaries.

(f) Rule of Accountability

Proposed paragraph (j)(4) contains a rule of accountability. The rule provides that a bankruptcy trustee acting as qualified termination administrator, or an eligible designee, shall not, through waiver or otherwise, seek a release from liability under ERISA, or assert a defense of derived judicial immunity (or similar defense) in any action brought against the bankruptcy trustee or eligible designee arising out of its conduct under the proposed amendments. The Department is aware that bankruptcy trustees sometimes request from the bankruptcy court comfort orders seeking relief from ERISA fiduciary liability in their roles as administrators to plans. However, bankruptcy trustees who wind up chapter 7 plans under the Abandoned Plan Regulations benefit from the limited exposure to ERISA liability provided by the regulations. (See paragraph (e) of § 2578.1.) The Department believes the regulatory framework, as constructed, serves to minimize to the greatest extent possible the liability and exposure of qualified termination administrators who carry out their responsibilities in accordance with the provisions of the Abandoned Plan Regulations.[15] As a condition to receiving the benefit of the limited liability provided by the Abandoned Plan Regulations, a bankruptcy trustee would not be permitted to seek a release from liability under ERISA. Paragraph (j)(4) does not prevent a bankruptcy trustee from asking a court to resolve an actual dispute involving a plan or to obtain an order required under the U.S. Bankruptcy Code. However, it does bar a trustee from seeking a ruling from a court for approval of its actions, where a trustee has the power to act without judicial approval. For example, a bankruptcy trustee may not seek court approval of the amount to pay a professional from assets of the plan, but must exercise his or her own judgment. In addition, a bankruptcy trustee may not claim it is not subject to suit for breach of fiduciary duty as to the amount of a payment from an ERISA plan because it previously obtained a court order approving the amount of the payment.

[15] 71 FR 20806.

2. Discussion of Changes to 29 CFR 2550.404a–3—Safe Harbor for Distributions From Terminated Individual Account Plans

The Abandoned Plan Regulations, in relevant part, provide that, with respect to missing and nonresponsive participants or beneficiaries,[16] qualified termination administrators shall distribute benefits in the form of direct rollovers to individual retirement plans within the meaning of section 7701(a)(37) of the Code. (See § 2578.1(d)(2)(vii)(B).) However, the Abandoned Plan Regulations also contain a special rule for small account balances of $1,000 or less.[17] Under the special rule, a qualified termination administrator may make distributions to certain bank accounts (interest-bearing federally insured bank or savings association accounts) or to State unclaimed property funds. (See 29 CFR 2550.404a–3(d)(1)(iii).) The proposal would add paragraph (d)(iv) to § 2550.404a–3 to make clear that the special rule also is available in the case of chapter 7 plans.

3. Discussion of Changes to 29 CFR 2520.103–13—Special Terminal Report for Abandoned Plans

The Abandoned Plan Regulations provide for simplified reporting to the Department for qualified termination administrators that wind up the affairs of abandoned plans. (See 29 CFR 2520.103–13.) The time savings resulting from this abbreviated reporting requirement reduces administrative costs for abandoned plans and preserves account balances, resulting in increased benefits to participants and beneficiaries. The proposed amendments would revise these simplified reporting requirements to make clear that they are available to chapter 7 plans. Specifically, the proposal would revise paragraph (b)(1) of § 2520.103–13 to include identification information about the bankruptcy trustee as well as the qualified termination administrator, if the qualified termination administrator is not the bankruptcy trustee.

[16] In this context, a missing or nonresponsive participant or beneficiary is a participant or beneficiary who fails to elect a form of distribution within 30 days from the date the notice of plan termination is furnished by the qualified termination administrator.

[17] The justification for the special rule is set forth in the preamble to the Abandoned Plan Regulations. See 71 FR 20828. The conditions related to the special rule are set forth at 29 CFR 2550.404a–3(d)(1)(iii).

E. Technical Amendments Unrelated to Chapter 7 Plans

The Abandoned Plan Regulations require qualified termination administrators to state whether they, or any affiliate, are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan. (See § 2578.1(c)(3)(i)(C).) This statement must be included in the notice of plan abandonment furnished to the Department before a plan can be terminated and wound up under the Abandoned Plan Regulations. Although such information does not alone bar a person from serving as a qualified termination administrator, the statement serves as a flagging mechanism to help the Department identify potential arrangements that are not in the best interests of plan participants and beneficiaries. However, the Department is proposing to eliminate this requirement for the following reasons. First, the Department generally can determine from its own records whether a person is, or in the past 24 months was, the subject of an investigation concerning his conduct as a fiduciary or party in interest with respect to any ERISA covered plan. Second, by definition, qualified termination administrators tend to be large financial institutions with many affiliations and, therefore, it may be costly for them to prepare an accurate statement. Third, the requirement appears to deter some qualified persons from serving as qualified termination administrators. In this regard, some individuals have expressed a reluctance to affirm in a notice to the federal government that they or an affiliate are or were under an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan. Because the Department believes that this requirement now is unnecessary and may even discourage the use of the Abandoned Plan Program, it is proposing to remove the requirement from the Abandoned Plan Regulations.

In conjunction with the proposed removal of the investigation statement in § 2578.1(c)(3)(i)(C) referenced above, the Department intends to remove a part of the definition of the term ''affiliate'' in § 2578.1(h). In the Abandoned Plan

Regulations, the term ''affiliate'' for general purposes of § 2578.1 means any person directly or indirectly controlling, controlled by, or under common control with, the person, or any officer, director, partner or employee of the person. (See § 2578.1(h)(1).) However, for the specific purpose of the requirement for qualified termination administrators to state whether they, or any affiliate are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning the their conduct as a fiduciary or party in interest with respect to any ERISA covered plan, the Abandoned Plan Regulations contain a narrower definition in § 2578.1(h)(2). Given the proposal to eliminate this statement regarding investigations, the Department also is proposing to eliminate the narrower definition of ''affiliate.'' The generally applicable definition of the term ''affiliate'' would remain in effect. (See modifications in the proposal to paragraph (h) of § 2578.1.)

The Abandoned Plan Regulations generally require the qualified termination administrator to distribute a missing or nonresponsive participant's account balance to an individual retirement plan in the participant's name. (See § 2578.1(d)(2)(vii).) An exception exists for account balances of $1,000 or less, which may be transferred to an interest-bearing, federally-insured bank or savings association account or to the unclaimed property fund of a State, if certain conditions are satisfied. (See § 2550.404a–3(d)(1)(iii).) Sometimes a qualified termination administrator will know that a missing participant whose account balance is greater than $1,000 is deceased and that there is no named beneficiary, or that the named beneficiary also is deceased. In such circumstances, the Abandoned Plan Regulations require the qualified termination administrator to transfer the participant's account balance to an individual retirement plan even if it is unlikely that anyone will ever claim these benefits. The Department has been advised that, in some cases, providers of individual retirement plans will not accept such distributions. The Department is concerned that obstacles like this prevent abandoned plans from being completely terminated and could prevent qualified entities from serving as qualified termination administrators, leaving participants in abandoned plans with no ability to access their retirement benefits. This proposal, therefore, conditionally would permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund, regardless of the size of the account balance. Such a transfer would be permitted only if the qualified termination administrator reasonably and in good faith finds that the participant and, if applicable, the named beneficiary, are deceased, and includes in the Final Notice to EBSA the identity of the deceased participant and/or beneficiary and the basis for the finding. (See proposed paragraph (d)(1)(v) of § 2550.404a–3.) The Department is soliciting public comments specifically on whether the proposed conditions sufficiently safeguard the rights of participants and beneficiaries. For example, should a qualified termination administrator be prohibited from these transfers if it has actual knowledge that a descendent of the deceased has a claim?

The final step in winding up an abandoned plan under the Abandoned Plan Regulations is filing the Special Terminal Report for Abandoned Plans (STRAP) under § 2520.103–13. As stated in the preamble to the Abandoned Plan Regulations, the purpose of this provision is to provide annual reporting relief relating to abandoned plan filings by qualified termination administrators.[18] The contents of the STRAP include, for example, total assets of the plan as of the deemed termination date, termination expenses paid by the plan, and the total amount of distributions. To file the STRAP, a qualified termination administrator must use the Form 5500 and either the Schedule I or a ''Schedule QTA.'' Instructions for filing the STRAP are not included in the instructions to the Form 5500 Annual Return/Report of Employee Benefit Plan. Specific instructions for completing and filing the STRAP are on EBSA's Web site at *http://www.dol.gov/ebsa/publications/APterminalreport.html.* This proposal would amend paragraph (c)(2) of § 2520.103–13 to clarify and update the specific location of these instructions.

F. Internal Revenue Service

As it did in connection with the existing Abandoned Plan Regulations, the Department conferred with representatives of the Internal Revenue Service regarding the qualification requirements under the Code as applied to plans that are terminated pursuant to 29 CFR 2578.1, as modified by the proposed amendments contained in this document. The Internal Revenue Service advised that it would not challenge the qualified status of any plan terminated under § 2578.1 or take any adverse action against, or seek to assess or impose any penalty on, the qualified termination administrator, the plan, or any participant or beneficiary of the plan (including the qualified status of any chapter 7 plan terminated under these proposed amendments) as a result of such termination, including the distribution of the plan's assets, provided that the qualified termination administrator satisfies three conditions. First, the qualified termination administrator, based on plan records located and updated in accordance with § 2578.1(d)(2)(i), reasonably determines whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 of the Code apply to any benefit payable under the plan and takes reasonable steps to comply with those requirements (if applicable). Second, each participant and beneficiary has a nonforfeitable right to his or her accrued benefits as of the date of deemed termination under § 2578.1(c)(1), subject to income, expenses, gains, and losses between that date and the date of distribution. Third, participants and beneficiaries must receive notification of their rights under section 402(f) of the Code. This notification should be included in, or attached to, the notice described in § 2578.1(d)(2)(vi). Notwithstanding the foregoing, as indicated in the preamble to the final Abandoned Plan Regulations (71 FR 20827), the Internal Revenue Service reserves the right to pursue appropriate remedies under the Code against any party who is responsible for the plan, such as the plan sponsor, plan administrator, or owner of the business, even in its capacity as a participant or beneficiary under the plan.[19]

The Internal Revenue Service also advised the Department that chapter 7 bankruptcy trustees using the Abandoned Plan Program would not be expected to use the Employee Plans Compliance Resolution System (EPCRS) as a condition to this relief.

G. Regulatory Impact Analysis

1. Background and Need for Regulatory Action

As stated earlier in this preamble, this document contains proposed amendments to three previously published Abandoned Plan Regulations that facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring

[18] 71 FR 20830.

[19] See 71 FR 20827 (further discussion of the Department's response to commenters on the three IRS conditions).

employers. The amendments primarily propose to: (1) Permit bankruptcy trustees to use the Department's Abandoned Plan Regulations to terminate and wind up the plans of sponsors in liquidation under chapter 7 of the U.S. Bankruptcy Code; (2) eliminate the requirement that qualified termination administrators state in a notice to the Department whether they, or any affiliate are, or in the past 24 months were, the subject of an investigation, examination, or enforcement action by the Department, the Internal Revenue Service, or the Securities and Exchange Commission concerning their conduct as a fiduciary or party in interest with respect to any ERISA covered plan; and (3) conditionally permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund regardless of the size of the account balance. The need for these regulatory changes is explained in detail above in the ''Background'' section and in the overview sections, C through F, of this preamble.

2. Executive Order 12866 and 13563 Statement

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives. The Department has identified the amendments to the Abandoned Plan Regulations as a retrospective regulatory review project consistent with the principals of Executive Order 13563. The Department believes that the proposed changes to the Abandoned Plan Regulations would improve the overall efficiency of the Abandoned Plan Program, increase its usage, and substantially reduce burdens and costs on bankruptcy trustees terminating the plans of sponsors in chapter 7 liquidation, the plans of bankrupt sponsors, and the participants in these plans.

Under Executive Order 12866, ''significant'' regulatory actions are subject to the requirements of the executive order and review by the Office of Management and Budget (OMB). Section 3(f) of the executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed rule is not a ''significant regulatory action'' under section 3(f) of the executive order. Accordingly, OMB has not reviewed this regulatory action or the Department's assessment of its costs and benefits, which is presented below.

3. Number of Affected Entities

As stated above, the proposed amendments to the Abandoned Plan Regulations would extend the framework of the regulations to chapter 7 plans. In order to estimate the number of entities affected by the Abandoned Plan Regulations as amended by the proposal, the Department must determine the number of abandoned plans that would be eligible to be terminated and wound up under the Abandoned Plan Program. At the inception of the Abandoned Plan Program in 2006, the Department based its estimate of the number of eligible plans upon Form 5500 data. Because the Department has over five years of experience with the Abandoned Plan Program, it now can base its estimate on data from EBSA's Office of Enforcement. These data show that in fiscal year 2007, the Department received 70 applications from potential qualified termination administrators to wind up abandoned plans. The number of applications increased to 331 in fiscal year 2010. Based on the foregoing, the Department estimates that approximately 330 plans covering 1,980 participants (330 plans × 6 participants per plan) would be terminated and wound up under the Abandoned Plan Program each year if the program remains unchanged.

The Department believes that there will be a 50 percent increase in the number of applications to the Abandoned Plan Program if plans of sponsors entering liquidation are permitted to be terminated and wound up under the Abandoned Plan Program. This would increase the total number of applications to 495 plans (330 plans × 1.5), and the number of affected participants to 2,970 (495 plans × 6 participants per plan), assuming that chapter 7 plans have roughly the same number of participants as other eligible plans. The Department welcomes comments regarding these estimates.

4. Costs

The Department estimates that the cost associated with extending the Abandoned Plan Program to chapter 7 plans would total approximately $64,000. These costs only would be imposed on the estimated 165 chapter 7 plans that chose to participate in the program. The Department also has updated its costs and benefits estimate for the entire Abandoned Plan Program to reflect its experience with the program since its inception in 2006. The Department estimates that the 330 abandoned plans participating in the Abandoned Plan Program would incur the following costs: $127,000 in annual costs attributable to abandoned plans' qualified termination administrator filings and notices; $4.48 million attributable to fiduciaries of the approximately 39,000 terminating plans (other than abandoned and chapter 7 plans) continuing to use the Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3), of which $3.52 million is equivalent hour burden cost attributable to in-house clerical staff and benefit managers' time; and $961,000 in mailing cost to distribute the required notices to approximately 3.1 million participants. Overall, the Department estimates that the costs of the regulations and class exemption, as amended by the proposal, would total approximately $4.67 million ($3.52 million in annual equivalent costs and $1.15 million in annual cost burden) but, as stated above, only $64,000 of such costs relate to the proposed amendments. These costs are quantified and discussed in more detail in the Paperwork Reduction Act section, below.

5. Benefits

The proposed amendments provide critical guidance that will encourage the orderly and efficient termination of

chapter 7 plans and distribution of account balances, thereby increasing the retirement income security of participants and beneficiaries in such plans. Absent the standards and procedures set forth in the Abandoned Plan Regulations, some bankruptcy trustees may lack the necessary guidance to properly terminate chapter 7 plans and distribute benefits to participants and beneficiaries. Specifically, the Abandoned Plan Regulations clarify the bankruptcy trustee's obligations as qualified termination administrator with respect to updating plan records, calculating account balances, selecting and monitoring service providers, distributing benefits, and paying fees and expenses.

The Department believes that providing this guidance and allowing bankruptcy trustees to serve or designate others to serve as qualified termination administrators will lead to administrative cost savings for trustees that choose to participate in the Abandoned Plan Program. The Department has not quantified these benefits because it does not have sufficient information regarding the characteristics of chapter 7 plans.[20] The Department expects that bankruptcy trustees will decide to participate in the Abandoned Plan Program based on their individual assessment of whether it would be more cost effective to terminate a plan inside or outside of the program.

One of the most significant cost savings that would result from the proposed amendments is that chapter 7 plans no longer would incur costly audit fees that otherwise would diminish plan assets, because bankruptcy trustees will file one streamlined termination report at the end of the winding up process in lieu of the Form 5500 Annual Return/Report.

Other benefits associated with bankruptcy trustees' participation in the Abandoned Plan Program are that the proposed rule would require that a qualified termination administrator of a chapter 7 plan (whether a bankruptcy trustee or eligible designee): (1) Take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with the collection of contributions, and (2) report to the Department known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets.

With respect to abandoned plans other than chapter 7 plans, the orderly termination of plans will produce quantitative benefits by maximizing account balances payable to participants and beneficiaries because prompt, efficient termination of abandoned plans would eliminate future administrative expenses that would otherwise diminish the plan's assets. In addition, the regulations' specific standards and procedures for terminating abandoned plans will reduce termination costs. Both of these quantitative benefits will reduce the extent to which plan assets are drawn upon to pay plan expenses.

The Department estimates the benefits for such plans by comparing the ongoing administrative costs of maintaining an abandoned plan with the cost of terminating such a plan under the Abandoned Plan Regulations. The magnitude of the costs for a qualified termination administrator to wind up the affairs of an abandoned plan under the Abandoned Plan Regulations is meaningful only when compared to the savings of future administrative expenses that would result from the plan's termination. A comparison of termination costs with administrative savings is complicated by the fact that termination costs will be incurred only once, while the savings in eliminated administrative costs will accrue throughout the years during which the plan would have continued to exist in its abandoned state. In order to assess the balance of costs and benefits, the Department has estimated the present value of future ongoing administrative expenses using a five percent discount rate over a period of three years after termination. The actual duration of abandonment cannot be determined with certainty; however, the Department believes that a period of one to five years provides a reasonable basis to illustrate the potential administrative cost savings that could arise in future years from the termination of abandoned plans.

In order to determine the average costs for winding up abandoned plans under the Abandoned Plan Regulations, the Department examined the Special Terminal Reports for Abandoned Plans STRAPs filed by qualified termination administrators participating in the Abandoned Plan Program since its inception in 2006. These STRAPs indicate that average termination costs were $700 and that 60 percent of the plans incurred termination costs of less than $200. As stated above, the Department estimates that 330 plans would terminate under the Abandoned Plan Program if it remained unchanged, therefore, termination costs would total approximately $231,000 (330 plans × $700 termination costs per plan).

In order to assess the benefits of the proposed amendments, the Department also must estimate the ongoing administrative expenses that would have been incurred by abandoned plans if such plans were not terminated under the Abandoned Plan Program. Since the inception of the Abandoned Plan Program in 2006, the average asset level of plans terminating under the program is $54,000. Data from a recent Investment Company Institute report prepared by Deloitte LLP indicate that 401(k) plans with under $1 million in assets pay approximately 1.41 percent of total net assets in annual administrative fees. Given that over 99 percent of the plans had under $1 million in assets at the time of termination, 1.41 percent would be a reasonable estimate to use to determine administrative expenses that would have been incurred by abandoned plans. Assuming plans that are terminated and wound up under the Abandoned Plan Program pay fees at roughly the same rate as other small plans, the Department estimates that average ongoing administrative expenses would be approximately $760 per year ($54,000 × .0141).

Based on the foregoing, the present value of administrative expenses that otherwise would have been paid over the three years following termination exceeds the termination cost by approximately $1,470 ($2,170 of ongoing administrative expenses discounted at five percent over three years minus $700 up front termination costs = $1,470) generating expected savings for plan participants and beneficiaries of approximately $490,000 ($1,470 × 330 plans). In subsequent years, the savings resulting from eliminating ongoing administrative expenses that would have been incurred if abandoned plans were not terminated under the proposed amendments would further add to that differential.

Benefits Associated with Amendment to Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3): This section provides a safe harbor under which plan fiduciaries (including qualified termination administrators) of terminated individual account plans can directly transfer a missing or nonresponsive participant's account balance directly to appropriate

[20] The Department invites public comments regarding the characteristics of chapter 7 plans that may participate in the Abandoned Plan Program.

investment vehicles in the participant's name. An exception exists for account balances of $1,000 or less, which may be transferred to an interest-bearing, federally-insured bank or savings association account or to the unclaimed property fund of a state, if certain conditions are satisfied. As stated above in this preamble, § 2550.404a–3 is being amended to conditionally permit qualified termination administrators to transfer the account balances of decedents to an appropriate bank account or a state's unclaimed property fund, regardless of the size of the account balance. The proposed amendments would remove an obstacle to greater usage of the Abandoned Plan Program by eliminating the need to establish costly individual retirement plans for the account balances of known deceased participants that are over $1,000 when it is unlikely that anyone will claim the funds in such plans.

Benefits Associated with Amendment to Eliminate Statement of Past or Present Investigations: As stated above in this preamble, § 2578.1 is being amended to remove the under investigation statement in the notice of plan abandonment from the qualified termination administrator to the Department (see § 2578.1(c)(3)(i)(C)). The Department believes that, at present, this statement is unnecessary and may even discourage use of the Abandoned Plan Program. The statement is unnecessary because EBSA's Office of Enforcement is able to run searches with only de minimis cost to determine whether potential qualified termination administrators are under investigation by the Department. By encouraging more potential qualified termination administrators to wind up abandoned plans in accordance with the Abandoned Plan Regulations, the Department believes abandoned plan terminations will occur more efficiently, and more participants and beneficiaries of abandoned plans will gain access to their benefits.

6. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the proposed rule on the amendments to the Abandoned Plan Regulations. A copy of the ICR may be obtained by contacting the PRA addressee shown below. The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are interested particularly in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- 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.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *http://www.RegInfo.gov.*

The Department has assumed that most of the tasks that will be undertaken by qualified termination administrators in connection with abandoned plan terminations are the same as those required in normal plan administration, such as calculating or distributing benefits, and therefore are not accounted for as burden in this analysis because they are either part of the usual business practices of plans or have already been accounted for in ICRs for other statutory and regulatory provisions under title I of ERISA.

The Abandoned Plan Regulations require a qualified termination administrator to send up to five notices in the process of terminating and winding up an abandoned plan. Before winding up an abandoned plan, the qualified termination administrator (other than the qualified termination administrator of a chapter 7 plan) must make reasonable efforts to locate or communicate with the plan sponsor, such as by sending a notice to the last known address of the plan sponsor notifying the sponsor of the intent to terminate and wind up the plan and allowing the sponsor an opportunity to respond. Following the qualified termination administrator's finding of abandonment, or when there is an entry of an order for relief for a chapter 7 plan, the qualified termination administrator must send notice to the Department of its eligibility to serve as qualified termination administrator to wind up the abandoned plan and provide other specified plan information. The qualified termination administrator then sends a notice to the participants and beneficiaries in the plan, written in a manner calculated to by understood by the average plan participant, that their plan is being terminated, what is their account balance and the date on which it was calculated by the qualified termination administrator, a description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the qualified termination administrator of such election, what will happen to their account if the participant or beneficiary fails to make a distribution election within 30 days of receipt of the notice, and other information regarding their rights under the plan's termination. Upon terminating and distributing the assets of the plan, the qualified termination administrator must send a final notice to the Department stating that the plan has been terminated. The qualified termination administrator attaches to the final notice a STRAP. The Department has estimated the burden as a cost burden to the plan because the qualified termination administrator uses plan assets to pay for these notices and other costs of winding up the plan. These notices are information collection requests (ICRs) subject to the PRA. The hour and cost burden associated with these ICRs are

summarized in the following table discussed below.

COST BURDEN OF RULE

	Bankrupt plans Chapter 7 (new to this RIA)	Abandoned plans—non Chapter 7 (in previous RIA)	Terminating plans (in previous RIA)	Total
Notice to Plan Sponsor	$0	$5,500	$0	$5,500
Notice to DOL	8,700	17,300	0	26,000
Bankrupt Plans (Court Order)	3,200	0	0	3,200
Notice to Participants	3,600	7,200	0	10,700
Final Notice	3,300	6,700	0	10,000
Bankrupt Plans (Fiduciary Breach)	600	0	0	600
Form 5500 Terminal Report	35,600	71,200	0	106,800
Safe Harbor	0	0	4,480,000	4,480,000
Class Exemption Familiarization	9,400	18,700	0	28,100
Total	64,000	127,000	4,480,000	4,670,000

Notice to Plan Sponsor: This notice requirement only applies to plans that are not chapter 7 plans. The Department estimates that for each of these estimated 330 plans, a qualified termination administrator may utilize 10 minutes of clerical staff time at an hourly labor rate of $28.21 to fill in the needed information on the plan sponsor notice, and five minutes of a financial professional's time at an hourly labor rate of $66.36 to review and sign the notice.[21] This results in approximately 83 hours of clerical staff time with an associated cost burden of $1,600 (55 hours x $28.21 per hour) and 27.5 hours of a financial professional's time with an associated cost burden of $1,800 (27.5 hours × $66.36 per hour).[22]

The rule requires plan sponsor notices to be sent by a method requiring acknowledgement of receipt. Therefore, mailing costs include $6.35 for postage and email receipt of delivery. The mailing costs include paper and print costs of five cents per page for the one page notice. Therefore, the materials and mailing costs are estimated to be $2,100 for the 330 notices. As indicated in the chart above, there are $5,500 in total costs associated with this requirement ($1,600 clerical, $1,800 financial professional and $2,100 in mailing costs) all imposed on plans filing under the Abandoned Plan Program.

Notice of plan abandonment to the Department: The Department estimates that for each of the estimated 495 plans, a qualified termination administrator may utilize 30 minutes of a clerical worker's time at an hourly rate of $28.21 to fill in the needed information on the notice. It also is assumed that 30 minutes of a financial professional's time with an hourly rate of $66.36 will be required to prepare required plan information, and to review and sign the forms. This results in about 248 hours (495 plans × .5 hours) of clerical staff time with an associated cost burden of $7,000 (495 plans × .5 hours × $28.21 per hour), and 248 hours (495 plans × .5 hours) of a financial professional's time with an associated cost burden of $16,400 (495 plans × .5 hours × $66.36 per hour).

The Department assumes that approximately 80 percent of these initial notices to the Department will be sent by mail and that the rest will be submitted electronically (495 plans × .8 fraction by mail = 396 plans send notice by mail). Therefore, mailing costs include $6.35 for postage and email receipt of delivery. The mailing costs include paper and print cost of five cents per page. The model notice is three pages. Therefore, the materials and mailing cost are estimated to be $2,600 (396 plans × ($6.35 + 3 pages × $.05 per page)) for the 396 notices that will be mailed. The total costs of this component are therefore $26,000[23] ($8,700 of which are new costs attributable to the chapter 7 plans, which are ⅓ of the affected plans, and $17,300 of which are cost attributable to ⅔ of the affected plans that are not chapter 7 plans).

Notice of bankruptcy trustee's appointment—Chapter 7 Plans: For the estimated 165 chapter 7 plans, an additional cost would be incurred for the qualified termination administrator to attach a copy of the notice on the case docket or order for relief reflecting the bankruptcy trustee's appointment to administer the plan sponsor's chapter 7 liquidation case as well as identification information regarding the bankruptcy trustee. The Department estimates that it will take 15 minutes of a financial professional's time to prepare the statement and collect required documents and five minutes of clerical time to make required copies. This is expected to impose an additional hour burden of approximately 41 hours (165 plans × .25) on the financial professionals and a cost burden of $2,700 (41 hours × $66.36 per hour) on the financial professionals. For the clerical professionals, the hour burden is estimated at 14 hours (165 plans × .0833 hours) and associated cost burden is $400 (14 hours × $28.21 per hour).

Material requirements are expected to be 10 pages, costing $66 in total ($0.50 per affected plan × .80 fraction of plans that submit initial notices by paper × 165 plans). The proposed rule requires the notice or order entered in the case reflecting the bankruptcy trustee's appointment to be included with the initial notice. Thus, the total cost of this filing requirement is $3,200 ($2,700 + $400 + $66), all of which is for the 165 Chapter 7 plans.

Notice to Participants and Beneficiaries: The ERISA Advisory Council in the Report of the Working Group on Orphan Plans had indicated most abandoned plans are small plans with 25 or fewer participants and

[21] The Department estimates 2012 hourly labor rates to include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2011, Bureau of Labor Statistics) and the Employment Cost Index (September 2011, Bureau of Labor Statistics); the 2010 estimated labor rates are then inflated to 2012 labor rates.

[22] Any discrepancies in calculations in this section and the table above result from rounding. Estimates are rounded to the nearest $10, $100, $1,000, or $10,000. Hour estimates also are rounded in the text.

[23] $26,000 = $7,000 for clerical cost time + $16,400 for financial professional time + $2,600 for mailing.

beneficiaries. Thus, initially the Department conservatively estimated that there were 20 participants per plan impacted by the Abandoned Plan Regulations. However, after the inception of the Abandoned Plan Program, updated filings data provided by the Office of Enforcement show that in no year were there on average more than six participants per filing plan. The Department estimates that, using this updated information, approximately 330 plans will apply each year if the Abandoned Plan Regulations remain unchanged. This covers a maximum of 1,980 participants (330 plans × 6 participants per plan). With bankruptcy trustees being permitted to wind up the plans of sponsors in chapter 7 liquidation under the Abandoned Plan Regulations, the Department estimates that there will be a 50 percent increase in applications, bringing the total number of filings up to 495 (330 plans × 1.5). Assuming that chapter 7 plans have roughly the same number of participants as abandoned plans, the total number of participants affected would be 2,970 (495 plans × 6 participants per plan).

The Department estimates that for each of the estimated 495 terminating plans, a QTA may utilize 5 minutes of a financial professional's time to review the notices. Clerical staff will spend on average 30 minutes preparing and mailing the notices (5 minutes per participant × 6 participants). This results in approximately 248 hours (495 plans × 6 participants per plan × .0833 hours per participant) of clerical staff time with an associated cost burden of $7,000 (248 hours × $28.21 per hour) and 41 hours (495 plans × .0833 hours per plan) of a financial professional's time with an associated cost burden of approximately $2,700 (41 hours × $66.36 per hour).

The model notice to participants is two pages. Therefore, the mailing and material costs are estimated to be 55 cents per mailing (2 × $.05 + $0.45). Of the 2,970 participants (495 plans × 6 participants per plan), 38 percent are expected to receive their notices electronically. The Department estimates that 1,840 participants will receive the notice by mail, creating a mailing cost burden of $1,000. In total, the cost burden from the notice to the participants and beneficiaries requirement is approximately $10,700.[24] Because ⅓ of the affected plans are chapter 7 plans, $3,600 of the burden is expected to be for the chapter 7 plans and $7,100 for the ⅔ of affected plans that are abandoned.

Final Notice: The Department estimates that for each of the estimated 495 terminating plans, a qualified termination administrator will utilize 10 minutes of a financial professional's time to review the forms. Clerical staff will spend, on average, 10 minutes per notice preparing and mailing the notices. This results in about 83 hours (495 plans × .167 hours) of clerical staff time with an associated cost burden of $2,300 (83 hours × $28.21 per hour) and 83 hours of a financial professional's time (495 plans × .167 hours) with an associated cost burden of $5,500 (83 hours × $66.36 per hour).

The Department assumes that, as a usual and customary business practice, the final notice to the Department will be sent by a method requiring acknowledgement of receipt. The model final notice is two pages. Therefore, the material costs are estimated to be $.10 per plan and postage of $6.35 per plan. For the 70 percent of plans that are expected to submit their applications by mail, total mailing costs are estimated to be $2,200 for the 495 notices (($6.35 per plan for mailing +$.10 for materials) × 495 plans × .70 fraction of plans submitting by mail). Thus, there is approximately $10,000 in total costs for the final notice. Of that total, approximately $3,300 is dedicated to the ⅓ of affected plans that are chapter 7 plans and $6,700 is attributable to the 330 qualified termination administrator filings for the ⅔ of plans that are abandoned.

Reporting Requirement for Prior Plan Fiduciary Breaches: As discussed earlier in this preamble, the proposed amendments would require qualified termination administrators to chapter 7 plans (whether they are bankruptcy trustees or eligible designees) to report to the Department known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches by a prior plan fiduciary that involve plan assets. This information must be reported in conjunction with the filing of the final notice or notice of plan abandonment. If a bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of the proposal, the bankruptcy trustee shall provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibilities. If, after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information that it believes may be evidence of fiduciary breaches by a prior plan fiduciary that involve plan assets, the bankruptcy trustee shall report such activity to the Department.

While the Department has no basis for estimating the percentage of arrangements where the qualified termination administrator must report known delinquent contributions or a past fiduciary breach, the Department assumes for purposes of this analysis that a report will be required in 10 percent of the applications from chapter 7 plans. Thus, given that there are an estimated 165 chapter 7 plans utilizing the exemption, the Department estimates that 17 plans will need to prepare and send this notice. The Department anticipates that one-half hour of a financial professional's time will be required to prepare the notice and five minutes of clerical time will be required to send the notice. The Department therefore estimates that the burden for plans to send the notice to EBSA's Office of Enforcement will be approximately 10 hours (17 plans × (.5 financial professional hours per plan + .0833 clerical hours per plan)) with a cost of $600 for trustees (17 plans × .5 financial professional hours × $66.36/hour + 17 plans × .0833 clerical hours × $28.21/hour) to send the notice. The Department anticipates that most of these notices will be filed with the final notice; therefore, this analysis includes no additional mailing cost. Each notice is expected to cost $0.10 (2 × $0.05). The Department estimates that 70 percent of the plans are expected to submit the final filing by mail, resulting in an additional material cost burden of $1.19 (17 × .7 fraction submitting by mail × $.10). Thus, this new requirement amounts to a cost burden of approximately $600, which is exclusively imposed on chapter 7 plans.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13): The Department estimates that it will take small plans 3.25 hours to file the STRAP in accordance with the instructions on the Department's web site. It is assumed that a financial accounting professional will perform this task resulting in an hour burden of 1,600 hours and a cost burden of $66.36 per hour resulting in a cost burden of $106,800 (3.25 hours × $66.36 per hour × 495 plans). For STRAPs submitted electronically, no burden is estimated for paper or mailing costs. For the assumed 70 percent of plans that submit their STRAPs by mail, the additional costs will be approximately $100 (495 plans × 6 pages per terminal report × $.05/page × .70 fraction of plans that

[24] $7,000 in clerical costs + $2,700 in financial professional costs + $1,000 in mailing costs.

submit final notices by mail). Thus, the total cost associated with the report is approximately $106,800 ($106,700 in financial accounting costs and $100 in material costs). Of this total, $35,600 is attributable to the ⅓ of plans that are chapter 7 plans and $71,200 is attributable to the ⅓ of plans that are abandoned. Only the chapter 7 plan costs represent new costs.

Safe Harbor for Distributions from Terminated Individual Account Plans (29 CFR 2550.404a–3): The PRA analysis also includes the burden associated with the notice to participants as required under ''The Safe Harbor for Distributions from Terminated Individual Account Plans.'' To meet the safe harbor, fiduciaries of terminating plans (other than abandoned plans) must furnish a notice to participants and beneficiaries informing them of the plan's termination and the options available for distribution of their account balances. The Department estimates that 3.1 million participants and beneficiaries will receive notices from approximately 39,000 plan sponsors.[25] The Department estimates that clerical professionals will spend, on average, two minutes per notice preparing and distributing the notices. The benefits manager will spend approximately 10 minutes preparing the notice. This results in an equivalent cost burden of $3.5 million calculated as follows: $2.92 million per year (3.1 million participants × .033 hours per participant × $28.21 per hour) in clerical time, and $607,000 (39,000 plans × .167 hours per plan × $93.31 per hour) in benefit manager costs. In addition, the Department assumes that each participant will receive a one page notice by first class mail resulting in a cost burden of $961,000 (3.1 million notices × ($0.45 for postage + ($0.05 per page × 1 page) × 0.62). Thus, with the updated numbers, total cost burden for terminating plans is $4.48 million. This total includes $3.49 million in equivalent costs from plan clerical time ($2.92 million) and plan benefit manager time ($607,000). There is also $961,000 in cost attributable to mailing the notices. These costs are not attributable to the proposed amendments allowing chapter 7 trustees to participate in the Abandoned Plan Program. They reflect the Department's revised estimates of the entire Abandoned Plans Program and take into account the most recent Form 5500 data.

[25] These estimates for the number of participants and sponsors are based on 2008 Form 5500 Data filings.

Abandoned Plan Class Exemption, PTE 2006–06: PTE 2006–06 permits a qualified termination administrator of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, and to pay itself or an affiliate fees for these services, provided that such fees are consistent with the conditions of the exemption. The exemption also permits a qualified termination administrator to: designate itself or an affiliate as a provider of an individual retirement plan or other account; select a proprietary investment product as the initial investment for the rollover distribution of benefits for a participant or beneficiary who fails to make an election regarding the disposition of such benefits; and pay itself or its affiliate in connection with the rollover.

Currently, PTE 2006–06 and the accompanying Abandoned Plan Regulations do not cover plans of sponsors involved in chapter 7 bankruptcy proceedings. In this regard, bankruptcy trustees do not meet the definition of qualified termination administrator as set forth in the existing Abandoned Plan Regulations and the class exemption. The proposed amendments expand the definition of qualified termination administrator to include bankruptcy trustees and certain persons designated by them to act as qualified termination administrators in terminating and winding up the affairs of abandoned plans. The Department believes that the proposed amendments to the Abandoned Plan Regulations and PTE 2006–06 will incentivize many bankruptcy trustees to carryout plan terminations consistent with ERISA, which will ultimately benefit participants and beneficiaries of such plans by ensuring abandoned plans are terminated in an orderly and cost-effective manner.

Compliance with the proposed amendments to the Abandoned Plan Regulations is a condition of the proposed amendment to the class exemption; therefore the costs and benefits that would be associated with complying with the proposed amendment to the class exemption have been described and quantified in connection with the economic impact of the proposed regulatory amendments. In its current and proposed amendment form, PTE 2006–06 requires, among other things, that fees and expenses paid to the qualified termination administrator and an affiliate in connection with the termination of an abandoned plan are consistent with industry rates for such or similar services, and are not in excess of rates ordinarily charged by the qualified termination administrator (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the Abandoned Plan Regulations, if the qualified termination administrator (or affiliate) provides the same or similar services to such other customers. The class exemption, in its current and proposed amendment form, also requires that qualified termination administrators ensure that the records necessary to determine whether the conditions of the exemption have been met are maintained for a period of six years, so that they may be available for inspection by any account holder of an individual retirement plan or other account established pursuant to this exemption, or any duly authorized representative of such account holder, the Internal Revenue Service, and the Department. Banks, insurance companies, and other financial institutions that provide services to abandoned plans and their participants and beneficiaries are required to act in accordance with customary business practices, which would include maintaining the records required under the terms of the class exemption, both in its current and proposed amendment form. Accordingly, the recordkeeping burden attributable to the proposed amendment will be handled by the qualified termination administrator and is expected to be small. However, there is an additional cost to directing this process. The Department assumes that a supervisor must devote time to each case in order to study the details of the individual plan, determine whether there have been any violations, and ensure that these details are properly incorporated into the notices. Assuming that all qualified termination administrators will take advantage of the proposed exemption, the hour burden attributable to supervisory duties for qualified termination administrators of abandoned plans (including familiarization costs for new qualified termination administrators) is expected to be one half hour for each qualified termination administrator, or 248 hours. Assuming a financial manager's wage rate of $113.39 per hour, this supervisory cost is expected to total $28,100 ($113.39 × 248). Approximately $9,400 of this cost (⅓ of the costs since 165 of the 495 estimated affected plans are chapter 7 plans) is expected to be attributable to financial manager costs dealing with chapter 7 plans and the remaining $18,700 of costs are attributable to financial

managers dealing with the ⅔ of abandoned plans.

Also, in certain limited circumstances, both the current exemption and proposed amendment to PTE 2006–06 require qualified termination administrators to provide the Department with a statement under penalty of perjury that services were performed and a copy of the executed contract between the qualified termination administrator and a plan fiduciary or plan sponsor. The Department does not include burden for these requirements as the burden is small, and the statement and contract can be included with other notices sent to the Department.

Type of Review: Proposed Revision of Existing Collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notices for Terminated Abandoned Individual Account Plans.

OMB Number: 1210–0127

Affected public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 39,495.

Responses: 3,103,960.

Frequency of Response: One time.

Estimated Total Burden Hours: 109,833.

Equivalent Costs of Hour Burden: $3,520,000.

Cost Burden: $ 1,150,000.

7. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA that permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities.

EBSA has preliminarily determined that these proposed rules may have a significant beneficial economic impact on a substantial number of small entities. In an effort to provide a sound basis for this conclusion, EBSA has prepared the following initial regulatory flexibility analysis. To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the provisions of the proposed amendments to the Abandoned Plan Regulations.

As explained earlier in the preamble, currently, the Abandoned Plan Program does not extend to plans sponsored by employers undergoing liquidation under chapter 7 of title 11 of the United States Code. Over the years, the Department has observed that, on numerous occasions, bankruptcy trustees have not terminated abandoned plans in an orderly and efficient manner. In many instances, such trustees are unaware of their fiduciary obligations under ERISA with respect to terminating plans of debtors and processes through which to wind up such plans.

The Department believes that the participants and beneficiaries would benefit from removing existing impediments that prevent chapter 7 bankruptcy trustees from terminating and winding up abandoned plans. Therefore, the Department is proposing to amend the Abandoned Plan Regulations (the three regulations and the related class exemption) to enable bankruptcy trustees to terminate abandoned plans in a manner consistent with ERISA and current regulations. The amendments would provide bankruptcy trustees with the option to serve as qualified termination administrators or to designate as a qualified termination administrator any person or entity that is eligible to serve as a trustee or issuer of an individual retirement plan and that holds assets of the chapter 7 plan. The Department believes that these amendments will help to preserve the assets of such abandoned plans, thereby maximizing benefits ultimately payable to participants and beneficiaries.

As described earlier in the preamble, the Department estimates that 330 abandoned plans (other than chapter 7 plans) would file under the Abandoned Plan Program. Essentially all abandoned plans are assumed to be small plans. Therefore, the more detailed discussion earlier in the preamble on the costs and benefits of the proposed amendments is applicable to this analysis of costs and benefits under the RFA. In summary, the net benefits of terminating an estimated 330 abandoned plans per year under the proposed amendments is $490,000. Thus, the estimated beneficial impact per plan is approximately $1,500 ($490,000/330 plans) before accounting for fees in individual retirement accounts to which participants and beneficiaries could rollover their distributed account balances. This net benefit analysis is an update of the 2006 estimate, with new information submitted to the Department's Office of Enforcement informing the analysis.

8. Congressional Review Act

This proposed amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

9. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the proposed rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by

the private sector of more than $100 million, adjusted for inflation.

10. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR chapter XXV as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–4 also issued under 29 U.S.C. 1021(f). Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k) and Pub. L. 109–280, § 502(a)(3), 120 Stat. 780, 940 (2006). Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

2. Revise § 2520.103–13 to read as follows:

§ 2520.103–13 Special terminal report for abandoned plans.

(a) *General.* The terminal report required to be filed by the qualified termination administrator pursuant to § 2578.1(d)(2)(viii) of this chapter shall consist of the items set forth in paragraph (b) of this section. Such report shall be filed in accordance with the method of filing set forth in paragraph (c) of this section and at the time set forth in paragraph (d) of this section.

(b) *Contents.* The terminal report described in paragraph (a) of this section shall contain:

(1) Identification information concerning the bankruptcy trustee and, if applicable, any eligible designee acting as the qualified termination administrator pursuant to § 2578.1(j)(1)(ii), and the plan being terminated.

(2) The total assets of the plan as of the date the plan was deemed terminated under § 2578.1(c) of this chapter, prior to any reduction for termination expenses and distributions to participants and beneficiaries.

(3) The total termination expenses paid by the plan and a separate schedule identifying each service provider and amount received, itemized by expense.

(4) The total distributions made pursuant to § 2578.1(d)(2)(vii) of this chapter and a statement regarding whether any such distributions were transfers under § 2578.1(d)(2)(vii)(B) of this chapter.

(5) The identification, fair market value and method of valuation of any assets with respect to which there is no readily ascertainable fair market value.

(c) *Method of filing.* The terminal report described in paragraph (a) shall be filed:

(1) On the most recent Form 5500 available as of the date the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vii) of this chapter; and

(2) In accordance with the instructions on EBSA's Web site (*http://www.dol.gov/ebsa/publications/APterminalreport.html*) pertaining to terminal reports of qualified termination administrators.

(d) *When to file.* The qualified termination administrator shall file the terminal report described in paragraph (a) within two months after the end of the month in which the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vii) of this chapter.

(e) *Limitation.* (1) Except as provided in this section, no report shall be required to be filed by the qualified termination administrator under part 1 of title I of ERISA for a plan being terminated pursuant to § 2578.1 of this chapter.

(2) Filing of a report under this section by the qualified termination administrator shall not relieve any other person from any obligation under part 1 of title I of ERISA.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

3. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135, sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–2 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

4. Revise § 2550.404a–3 to read as follows:

§ 2550.404a–3 Safe harbor for distributions from terminated individual account plans.

(a) *General.* (1) This section provides a safe harbor under which a fiduciary (including a qualified termination administrator, within the meaning of § 2578.1(g) or (j)(1)(ii) of this chapter) of a terminated individual account plan, as described in paragraph (a)(2) of this section, will be deemed to have satisfied its duties under section 404(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act)), 29

U.S.C. 1001 et seq., in connection with a distribution described in paragraph (b) of this section.

(2) This section shall apply to an individual account plan only if—

(i) In the case of an individual account plan that is an abandoned plan within the meaning of § 2578.1 of this chapter, such plan was intended to be maintained as a tax-qualified plan in accordance with the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code of 1986 (Code); or

(ii) In the case of any other individual account plan, such plan is maintained in accordance with the requirements of section 401(a), 403(a), or 403(b) of the Code at the time of the distribution.

(3) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this safe harbor. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to making distributions described in this section.

(b) *Distributions.* This section shall apply to a distribution from a terminated individual account plan if, in connection with such distribution:

(1) The participant or beneficiary, on whose behalf the distribution will be made, was furnished notice in accordance with paragraph (e) of this section or, in the case of an abandoned plan, § 2578.1(d)(2)(vi) of this chapter, and

(2) The participant or beneficiary failed to elect a form of distribution within 30 days of the furnishing of the notice described in paragraph (b)(1) of this section.

(c) *Safe harbor.* A fiduciary that meets the conditions of paragraph (d) of this section shall, with respect to a distribution described in paragraph (b) of this section, be deemed to have satisfied its duties under section 404(a) of the Act with respect to the distribution of benefits, selection of a transferee entity described in paragraph (d)(1)(i) through (iii) of this section, and the investment of funds in connection with the distribution.

(d) *Conditions.* A fiduciary shall qualify for the safe harbor described in paragraph (c) of this section if:

(1) The distribution described in paragraph (b) of this section is made to any of the following transferee entities—

(i) To an individual retirement plan within the meaning of section 7701(a)(37) of the Code;

(ii) In the case of a distribution on behalf of a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) who is not the surviving spouse of the deceased participant, to an inherited individual retirement plan (within the meaning of section 402(c)(11) of the Code) established to receive the distribution on behalf of the nonspouse beneficiary; or

(iii) In the case of a distribution by a qualified termination administrator (other than a bankruptcy trustee described in § 2578.1(j)(1)(ii)) with respect to which the amount to be distributed is $1,000 or less and that amount is less than the minimum amount required to be invested in an individual retirement plan product offered by the qualified termination administrator to the public at the time of the distribution, to:

(A) An interest-bearing federally insured bank or savings association account in the name of the participant or beneficiary,

(B) The unclaimed property fund of the State in which the participant's or beneficiary's last known address is located, or

(C) An individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) offered by a financial institution other than the qualified termination administrator to the public at the time of the distribution.

(iv) In the case of a distribution by a bankruptcy trustee as described in § 2578.1(j)(1)(ii) with respect to which the amount to be distributed is $1,000 or less and the bankruptcy trustee, after reasonable and good faith efforts, is unable to locate an individual retirement plan provider who will accept the distribution, to either distribution option described in paragraph (d)(1)(iii)(A) or (B) of this section.

(v) Notwithstanding paragraphs (d)(1)(iii) and (iv) of this section, the $1,000 threshold may be disregarded in any particular case if the qualified termination administrator reasonably and in good faith finds that the participant and, if applicable, the named beneficiary are deceased; and if the qualified termination administrator also includes in the notice described in § 2578.1(d)(2)(ix)(G) (the Final Notice) the identity of the deceased participant and beneficiary and the basis behind the finding.

(2) Except with respect to distributions to State unclaimed property funds (described in paragraph (d)(1)(iii)(B) of this section), the fiduciary enters into a written agreement with the transferee entity which provides:

(i) The distributed funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity (except that distributions under paragraph (d)(1)(iii)(A) of this section to a bank or savings account are not required to be invested in such a product);

(ii) For purposes of paragraph (d)(2)(i) of this section, the investment product shall—

(A) Seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), and

(B) Be offered by a State or federally regulated financial institution, which shall be: a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by State guaranty associations; or an investment company registered under the Investment Company Act of 1940;

(iii) All fees and expenses attendant to the transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), including investments of such plan, (e.g., establishment charges, maintenance fees, investment expenses, termination costs and surrender charges), shall not exceed the fees and expenses charged by the provider of the plan or account for comparable plans or accounts established for reasons other than the receipt of a distribution under this section; and

(iv) The participant or beneficiary on whose behalf the fiduciary makes a distribution shall have the right to enforce the terms of the contractual agreement establishing the plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section), with regard to his or her transferred account balance, against the plan or account provider.

(3) Both the fiduciary's selection of a transferee plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) or account (described in paragraph (d)(1)(iii)(A) of this section) and the investment of funds would not result in a prohibited transaction under section 406 of the Act, or if so prohibited such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) *Notice to participants and beneficiaries.* (1) *Content.* Each participant or beneficiary of the plan shall be furnished a notice written in a manner calculated to be understood by the average plan participant and containing the following:

(i) The name of the plan;

(ii) A statement of the account balance, the date on which the amount was calculated, and, if relevant, an indication that the amount to be distributed may be more or less than the amount stated in the notice, depending on investment gains or losses and the administrative cost of terminating the plan and distributing benefits;

(iii) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the plan administrator (or other fiduciary) identified in paragraph (e)(1)(vii) of this section of that election;

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will distribute the account balance of the participant or beneficiary to an individual retirement plan (i.e., individual retirement account or annuity described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section), if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan (described in paragraph (d)(1)(i) or (d)(1)(ii) of this section) provider, if such information is known at the time of the furnishing of this notice; and

(vii) The name, address, and telephone number of the plan administrator (or other fiduciary) from whom a participant or beneficiary may obtain additional information concerning the termination.

(2) *Manner of furnishing notice.* (i) For purposes of paragraph (e)(1) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(ii) In the case of a notice that is returned to the plan as undeliverable, the plan fiduciary shall, consistent with its duties under section 404(a)(1) of ERISA, take steps to locate the participant or beneficiary and provide notice prior to making the distribution. If, after such steps, the fiduciary is unsuccessful in locating and furnishing notice to a participant or beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within 30 days for purposes of paragraph (b)(2) of this section.

(f) *Model notice.* The appendix to this section contains a model notice that may be used to discharge the notification requirements under this section. Use of the model notice is not mandatory. However, use of an appropriately completed model notice will be deemed to satisfy the requirements of paragraph (e)(1) of this section.

BILLING CODE 4510–29–P

APPENDIX TO § 2550.404a-3

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

This notice is to inform you that [*name of the plan*] (the Plan) has been terminated and we are in the process of winding it up.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance in the Plan on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. {*If applicable, insert the following sentence:* The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.}

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the Plan's election process*}.

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). {*If the name of the provider of the individual retirement plan is known, include the following sentence:* The name of the provider of the individual retirement plan is [*name, address and phone number of the individual retirement plan provider*].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the plan administrator or other appropriate contact person*].

Sincerely,
[*Name of plan administrator or appropriate designee*]

BILLING CODE 4510–29–C

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

5. The authority citation for part 2578.1 continues to read as follows:

Authority: 29 U.S.C. 1135; 1104(a); 1103(d)(1).

6. Revise § 2578.1 to read as follows:

§ 2578.1 Termination of abandoned individual account plans.

(a) *General.* The purpose of this part is to establish standards for the termination and winding up of an individual account plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act)) with respect to which (1) a qualified termination administrator has determined there is no responsible plan sponsor or plan administrator within the meaning of section 3(16)(B) and (A) of the Act, respectively, to perform such acts, or (2) an order for relief under chapter 7 of title 11 of the United States Code has been entered with respect to the plan sponsor.

(b) *Finding of abandonment.* (1) A qualified termination administrator (as defined in paragraph (g) of this section) may find an individual account plan to be abandoned when:

(i) Either: (A) No contributions to, or distributions from, the plan have been made for a period of at least 12 consecutive months immediately preceding the date on which the determination is being made; or

(B) Other facts and circumstances (such as communications from participants and beneficiaries regarding distributions) known to the qualified termination administrator suggest that the plan is or may become abandoned by the plan sponsor; and

(ii) Following reasonable efforts to locate or communicate with the plan sponsor, the qualified termination administrator determines that the plan sponsor:

(A) No longer exists;

(B) Cannot be located; or

(C) Is unable to maintain the plan.

(2) Notwithstanding paragraph (b)(1) of this section, a qualified termination administrator may not find a plan to be abandoned if, at any time before the plan is deemed terminated pursuant to paragraph (c) of this section, the qualified termination administrator receives an objection from the plan sponsor regarding the finding of abandonment and proposed termination.

(3) A qualified termination administrator shall, for purposes of paragraph (b)(1)(ii) of this section, be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator sends to the last known address of the plan sponsor, and, in the case of a plan sponsor that is a corporation, to the address of the person designated as the corporation's agent for service of legal process, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(4) If receipt of the notice described in paragraph (b)(5) of this section is not acknowledged pursuant to paragraph (b)(3) of this section, the qualified termination administrator shall be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator contacts known service providers (other than itself) of the plan and requests the current address of the plan sponsor from such service providers and, if such information is provided, the qualified termination administrator sends to each such address, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(5) The notice referred to in paragraph (b)(3) of this section shall contain the following information:

(i) The name and address of the qualified termination administrator;

(ii) The name of the plan;

(iii) The account number or other identifying information relating to the plan;

(iv) A statement that the plan may be terminated and benefits distributed pursuant to 29 CFR 2578.1 if the plan sponsor fails to contact the qualified termination administrator within 30 days;

(v) The name, address, and telephone number of the person, office, or department that the plan sponsor must contact regarding the plan;

(vi) A statement that if the plan is terminated pursuant to 29 CFR 2578.1, notice of such termination will be furnished to the U.S. Department of Labor's Employee Benefits Security Administration;

(vii) The following statement: ''The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan will not relieve you of your liability for any such costs, penalties, taxes, etc.''; and

(viii) A statement that the plan sponsor may contact the U.S. Department of Labor for more information about the federal law governing the termination and winding-up process for abandoned plans and the telephone number of the appropriate Employee Benefits Security Administration contact person.

(c) *Deemed termination.* (1) Except as provided in paragraph (c)(2) of this section, if a qualified termination administrator finds (pursuant to paragraph (b)(1) of this section) that an individual account plan has been abandoned, or if a plan is considered abandoned due to the entry of an order for relief under chapter 7 of title 11 of the United States Code (pursuant to paragraph (j)(1)(i) of this section), the plan shall be deemed to be terminated on the ninetieth (90th) day following the date of the letter from EBSA acknowledging receipt of the notice of plan abandonment, described in paragraph (c)(3) or (j)(2) of this section.

(2) If, prior to the end of the 90-day period described in paragraph (c)(1) of this section, the Department notifies the qualified termination administrator that it—

(i) Objects to the termination of the plan, the plan shall not be deemed terminated under paragraph (c)(1) of this section until the qualified termination administrator is notified that the Department has withdrawn its objection; or

(ii) Waives the 90-day period described in paragraph (c)(1), the plan shall be deemed terminated upon the qualified termination administrator's receipt of such notification.

(3) Following a qualified termination administrator's finding, pursuant to paragraph (b)(1) this section, that an individual account plan has been abandoned, the qualified termination administrator shall furnish to the U.S. Department of Labor a notice of plan abandonment that is signed and dated by the qualified termination administrator and that includes the following information:

(i) *Qualified termination administrator information.* (A) The name, EIN, address, and telephone number of the person electing to be the qualified termination administrator, including the address, email address, and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) A statement that the person (identified in paragraph (c)(3)(i)(A) of this section) is a qualified termination administrator within the meaning of paragraph (g) of this section and elects to terminate and wind up the plan (identified in paragraph (c)(3)(ii)(A) of

this section) in accordance with the provisions of this section;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN, and plan number of the plan with respect to which the person is electing to serve as the qualified termination administrator;

(B) The name and last known address and telephone number of the plan sponsor; and

(C) The estimated number of participants and beneficiaries with accounts in the plan;

(iii) *Findings.* A statement that the person electing to be the qualified termination administrator finds that the plan (identified in paragraph (c)(3)(ii)(A) of this section) is abandoned pursuant to paragraph (b) of this section. This statement shall include an explanation of the basis for such a finding, specifically referring to the provisions in paragraph (b)(1) of this section, a description of the specific steps (set forth in paragraphs (b)(3) and (b)(4) of this section) taken to locate or communicate with the known plan sponsor, and a statement that no objection has been received from the plan sponsor;

(iv) *Plan asset information.* (A) The estimated value of the plan's assets held by the person electing to be the qualified termination administrator;

(B) The length of time plan assets have been held by the person electing to be the qualified termination administrator, if such period of time is less than 12 months;

(C) An identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets; and

(D) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section;

(v) *Service provider information.* (A) The name, address, and telephone number of known service providers (e.g., record keeper, accountant, lawyer, other asset custodian(s)) to the plan; and

(B) An identification of any services considered necessary to carry out the qualified termination administrator's authority and responsibility under this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator; and

(vi) *Perjury statement.* A statement that the information being provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(d) *Winding up the affairs of the plan.* (1) In any case where an individual account plan is deemed to be terminated pursuant to paragraph (c) of this section, the qualified termination administrator shall take steps as may be necessary or appropriate to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries.

(2) For purposes of paragraph (d)(1) of this section, except as provided pursuant to paragraph (j)(3) of this section (relating to chapter 7 plans), the qualified termination administrator shall:

(i) *Update plan records.* (A) Undertake reasonable and diligent efforts to locate and update plan records necessary to determine the benefits payable under the terms of the plan to each participant and beneficiary.

(B) For purposes of paragraph (d)(2)(i)(A) of this section, a qualified termination administrator shall not have failed to make reasonable and diligent efforts to update plan records merely because the administrator determines in good faith that updating the records is either impossible or involves significant cost to the plan in relation to the total assets of the plan.

(ii) *Calculate benefits.* Use reasonable care in calculating the benefits payable to each participant or beneficiary based on plan records described in paragraph (d)(2)(i) of this section. A qualified termination administrator shall not have failed to use reasonable care in calculating benefits payable solely because the qualified termination administrator—

(A) Treats as forfeited an account balance that, taking into account estimated forfeitures and other assets allocable to the account, is less than the estimated share of plan expenses allocable to that account, and reallocates that account balance to defray plan expenses or to other plan accounts in accordance with (d)(2)(ii)(B) of this section;

(B) Allocates expenses and unallocated assets in accordance with the plan documents, or, if the plan document is not available, is ambiguous, or if compliance with the plan is unfeasible,

(*1*) Allocates unallocated assets (including forfeitures and assets in a suspense account) to participant accounts on a per capita basis (allocated equally to all accounts); and

(*2*) Allocates expenses on a pro rata basis (proportionately in the ratio that each individual account balance bears to the total of all individual account balances) or on a per capita basis (allocated equally to all accounts).

(iii) *Report delinquent contributions.* (A) Notify the Department of any known contributions (either employer or employee) owed to the plan in conjunction with the filing of the notification required in paragraph (c)(3), (j)(2), or (d)(2)(ix) of this section.

(B) Except as provided in paragraph (j)(3)(i) of this section, nothing in paragraph (d)(2)(iii)(A) of this section or any other provision of the Act shall be construed to impose an obligation on the qualified termination administrator to collect delinquent contributions on behalf of the plan, provided that the qualified termination administrator satisfies the requirements of paragraph (d)(2)(iii)(A) of this section.

(iv) *Engage service providers.* Engage, on behalf of the plan, such service providers as are necessary for the qualified termination administrator to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries in accordance with paragraph (d)(1) of this section.

(v) *Pay reasonable expenses.* (A) Pay, from plan assets, the reasonable expenses of carrying out the qualified termination administrator's authority and responsibility under this section.

(B) Expenses of plan administration shall be considered reasonable solely for purposes of paragraph (d)(2)(v)(A) of this section if:

(*1*) Such expenses are for services necessary to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries,

(*2*) Such expenses: (*i*) Are consistent with industry rates for such or similar services, based on the experience of the qualified termination administrator; and

(*ii*) Are not in excess of rates ordinarily charged by the qualified termination administrator (or affiliate) for same or similar services provided to customers that are not plans terminated pursuant to this section, if the qualified termination administrator (or affiliate) provides same or similar services to such other customers, and

(*3*) The payment of such expenses would not constitute a prohibited transaction under the Act or is exempted from such prohibited transaction provisions pursuant to section 408(a) of the Act.

(vi) *Notify participants.* (A) Furnish to each participant or beneficiary of the plan a notice written in a manner calculated to be understood by the average plan participant and containing the following:

(*1*) The name of the plan;

(*2*) A statement that the plan has been determined to be abandoned by the plan sponsor and, therefore, has been terminated pursuant to regulations issued by the U.S. Department of Labor;

(*3*)(*i*) A statement of the participant's or beneficiary's account balance and the date on which it was calculated by the qualified termination administrator, and

(*ii*) The following statement: ''The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.'';

(*4*) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the qualified termination administrator (or designee) of that election;

(*5*) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the qualified termination administrator (or designee) will distribute the account balance of the participant or beneficiary directly:

(*i*) To an individual retirement plan (i.e., individual retirement account or annuity),

(*ii*) To an inherited individual retirement plan described in § 2550.404a–3(d)(1)(ii) of this chapter (in the case of a distribution on behalf of a distributee other than a participant or spouse),

(*iii*) In any case where the amount to be distributed meets the conditions in § 2550.404a–3(d)(1)(iii) or (iv), to an interest-bearing federally insured bank account, the unclaimed property fund of the State of the last known address of the participant or beneficiary, or an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or

(*iv*) To an annuity provider in any case where the qualified termination administrator determines that the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA) prevent a distribution under paragraph (d)(2)(vii)(B)(*1*) of this section;

(*6*) In the case of a distribution to an individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) a statement explaining that the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(*7*) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter) or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice;

(*8*) The name, address and phone number of the provider of the individual retirement plan (described in § 2550.404a–3(d)(1)(i) or (d)(1)(ii) of this chapter), qualified survivor annuity, or other account (described in § 2550.404a–3(d)(1)(iii)(A) of this chapter), if such information is known at the time of the furnishing of this notice; and

(*9*) The name, address, and telephone number of the qualified termination administrator and, if different, the name, address and phone number of a contact person (or entity) for additional information concerning the termination and distribution of benefits under this section.

(B)(*1*) For purposes of paragraph (d)(2)(vi)(A) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(*2*) In the case of a notice that is returned to the qualified termination administrator as undeliverable, the qualified termination administrator shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take steps to locate and provide notice to the participant or beneficiary prior to making a distribution pursuant to paragraph (d)(2)(vii) of this section. If, after such steps, the qualified termination administrator is unsuccessful in locating and furnishing notice to a participant or beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within the 30-day period described in paragraph (d)(2)(vii) of this section.

(vii) *Distribute benefits.* (A) Distribute benefits in accordance with the form of distribution elected by each participant or beneficiary with spousal consent, if required.

(B) If the participant or beneficiary fails to make an election within 30 days from the date the notice described in paragraph (d)(2)(vi) of this section is furnished, distribute benefits—

(*1*) In accordance with § 2550.404a–3 of this chapter; or

(*2*) If a qualified termination administrator determines that the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA) prevent a distribution under paragraph (d)(2)(vii)(B)(*1*) of this section, in any manner reasonably determined to achieve compliance with those requirements.

(C) For purposes of distributions pursuant to paragraph (d)(2)(vii)(B) of this section, the qualified termination administrator may designate itself (or an affiliate) as the transferee of such proceeds, and invest such proceeds in a product in which it (or an affiliate) has an interest, only if such designation and investment is exempted from the prohibited transaction provisions under the Act pursuant to section 408(a) of the Act.

(viii) *Special Terminal Report for Abandoned Plans.* File the Special Terminal Report for Abandoned Plans in accordance with § 2520.103–13 of this chapter.

(ix) *Final Notice.* No later than two months after the end of the month in which the qualified termination administrator satisfies the requirements in paragraph (d)(2)(i) through (d)(2)(vii) of this section, furnish to the Office of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, a notice, signed and dated by the qualified termination administrator, containing the following information:

(A) The name, EIN, address, email address, and telephone number of the qualified termination administrator, including the address and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) The name, account number, EIN, and plan number of the plan with respect to which the person served as the qualified termination administrator;

(C) A statement that the plan has been terminated and all the plan's assets have been distributed to the plan's participants and beneficiaries on the basis of the best available information;

(D) A statement that plan expenses were paid out of plan assets by the qualified termination administrator in accordance with the requirements of paragraph (d)(2)(v) or (j)(3)(v) of this section;

(E) If fees and expenses paid by the plan exceed by 20 percent or more the estimate required by paragraph (c)(3)(v)(B) or (j)(2)(v)(B) of this section, a statement that actual fees and expenses exceeded estimated fees and expenses and the reasons for such additional costs;

(F) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section (if not already reported under paragraph

(c)(3)(iv)(D) or (j)(2)(iv)(D) of this section);

(G) For each distribution in accordance with § 2550.404a–3(d)(1)(v) (relating to distributions on behalf of deceased participants and beneficiaries), an identification of the deceased participant and, if applicable, the deceased named beneficiary, and the basis behind the finding required by § 2550.404a–3(d)(1)(v); and

(H) A statement that the information being provided in the notice is true and complete based on the knowledge of the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(3) The terms of the plan shall, for purposes of title I of ERISA, be deemed amended to the extent necessary to allow the qualified termination administrator to wind up the plan in accordance with this section.

(e) *Limited liability.* (1)(i) Except as otherwise provided in paragraph (e)(1)(ii) and (iii) of this section, to the extent that the activities enumerated in paragraphs (d)(2) and (j)(3) of this section involve the exercise of discretionary authority or control that would make the qualified termination administrator a fiduciary within the meaning of section 3(21) of the Act, the qualified termination administrator shall be deemed to satisfy its responsibilities under section 404(a) of the Act with respect to such activities, provided that the qualified termination administrator complies with the requirements of paragraph (d)(2) and (j)(3) of this section as applicable.

(ii) A qualified termination administrator shall be responsible for the selection and monitoring of any service provider (other than monitoring a provider selected pursuant to paragraph (d)(2)(vii)(B) of this section) determined by the qualified termination administrator to be necessary to the winding up of the affairs of the plan, as well as ensuring the reasonableness of the compensation paid for such services. If a qualified termination administrator selects and monitors a service provider in accordance with the requirements of section 404(a)(1) of the Act, the qualified termination administrator shall not be liable for the acts or omissions of the service provider with respect to which the qualified termination administrator does not have knowledge.

(iii) For purposes of a distribution pursuant to paragraph (d)(2)(vii)(B)(*2*) of this section, a qualified termination administrator shall be responsible for the selection of an annuity provider in accordance with section 404 of the Act.

(2) Nothing herein shall be construed to impose an obligation on the qualified termination administrator to conduct an inquiry or review to determine whether or what breaches of fiduciary responsibility may have occurred with respect to a plan prior to becoming the qualified termination administrator for such plan.

(3) If assets of an abandoned plan are held by a person other than the qualified termination administrator, such person shall not be treated as in violation of section 404(a) of the Act solely on the basis that the person cooperated with and followed the directions of the qualified termination administrator in carrying out its responsibilities under this section with respect to such plan, provided that, in advance of any transfer or disposition of any assets at the direction of the qualified termination administrator, such person confirms with the Department of Labor that the person representing to be the qualified termination administrator with respect to the plan is the qualified termination administrator recognized by the Department of Labor.

(f) *Continued liability.* Nothing in this section shall serve to relieve or limit the liability of any person other than the qualified termination administrator due to a violation of ERISA.

(g) *Qualified termination administrator.* A termination administrator is qualified under this section only if:

(1) It is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and

(2) It holds assets of the plan that is found abandoned pursuant to paragraph (b) of this section.

(h) *Affiliate.* (1) The term affiliate means any person directly or indirectly controlling, controlled by, or under common control with, the person; or any officer, director, partner or employee of the person.

(2) For purposes of paragraph (h)(1) of this section, the term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) *Model notices.* Appendices to this section contain model notices that are intended to assist qualified termination administrators in discharging the notification requirements under this section. Their use is not mandatory. However, the use of appropriately completed model notices will be deemed to satisfy the requirements of paragraphs (b)(5), (c)(3), (d)(2)(vi), (d)(2)(ix), and (j)(2) of this section.

(j) *Special rules for chapter 7 plans.* (1) Notwithstanding paragraphs (b) and (g) of this section (relating to findings of abandonment and defining the term ''qualified termination administrator,'' respectively), if the sponsor of an individual account plan is in liquidation under chapter 7 of title 11 of the United States Code:

(i) The plan (''chapter 7 plan'') shall for purposes of this section be considered abandoned upon the entry of an order for relief. However, the plan shall cease to be considered abandoned pursuant to this paragraph (j)(1) if at any time before the plan is deemed terminated pursuant to paragraph (c) of this section, the plan sponsor's chapter 7 liquidation proceeding is dismissed or converted to a proceeding under chapter 11 of title 11 of the United States Code.

(ii) The bankruptcy trustee, or an eligible designee, may be the qualified termination administrator. An ''eligible designee'' is any person or entity designated by the bankruptcy trustee that is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and that holds assets of the chapter 7 plan. The bankruptcy trustee shall be responsible for the selection and monitoring of any eligible designee in accordance with section 404(a)(1) of the Act.

(2) *Notice of Plan Abandonment.* In accordance with paragraph (c) of this section, the qualified termination administrator under this paragraph (j) shall furnish to the U.S. Department of Labor a notice of plan abandonment that is signed and dated by the qualified termination administrator and that includes the following information:

(i) *Qualified termination administrator information.* The name, address (including email address), and telephone number of the bankruptcy trustee and, if applicable, the name, EIN, address (including email address), and telephone number of any eligible designee acting as the qualified termination administrator pursuant to paragraph (j)(1)(ii) of this section;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN, and plan number of the plan with respect to which the person is serving as the qualified termination administrator,

(B) The name and last known address and telephone number of the plan sponsor, and

(C) The estimated number of participants and beneficiaries with accounts in the plan;

(iii) *Chapter 7 information.* A statement that, pursuant to paragraph (j)(1) of this section, the plan is considered to be abandoned due to an entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code, and a copy of the notice or order entered in the case reflecting the bankruptcy trustee's appointment to administer the plan sponsor's case;

(iv) *Plan asset information.* (A) The estimated value of the plan's assets as of the date of the entry of an order for relief,

(B) The name, EIN, address (including email address) and telephone number of the entity that is holding these assets, and the length of time plan assets have been held by such entity, if the period of time is less than 12 months,

(C) An identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets, and

(D) An identification of known delinquent contributions pursuant to paragraph (d)(2)(iii) of this section;

(v) *Service provider information.* (A) The name, address, and telephone number of known service providers (e.g., record keeper, accountant, lawyer, other asset custodian(s)) to the plan, and

(B) An identification of any services considered necessary to carry out the qualified termination administrator's authority and responsibility under this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator; and

(vi) *Perjury statement.* A statement that the information being provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(3) *Winding up the affairs of the plan.* The qualified termination administrator shall comply with paragraph (d) of this section except as follows:

(i) *Delinquent contributions.* The qualified termination administrator of a plan described in paragraph (j)(1)(i) of this section shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take reasonable and good faith steps to collect known delinquent contributions on behalf of the plan, taking into account the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred in connection with collection. If the bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of this section, the bankruptcy trustee shall at the time of such designation notify the eligible designee of any known delinquent contributions.

(ii) *Report fiduciary breaches.* The qualified termination administrator of a plan described in paragraph (j)(1)(i) of this section shall report known delinquent contributions (employer and employee) owed to the plan, and any activity that the qualified termination administrator believes may be evidence of other fiduciary breaches that involve plan assets by a prior plan fiduciary. This information must be reported to the Employee Benefits Security Administration in conjunction with the filing of the notification required in paragraph (j)(2) or (d)(2)(ix) of this section. If a bankruptcy trustee designates an eligible designee as defined in paragraph (j)(1)(ii) of this section, the bankruptcy trustee shall provide the eligible designee with records under the control of the bankruptcy trustee to enable the eligible designee to carry out its responsibilities under paragraph (j)(3)(ii) of this section. If, after the eligible designee completes the winding up of the plan, the bankruptcy trustee, in administering the debtor's estate, discovers additional information not already reported in the notification required in paragraphs (j)(2) or (d)(2)(ix) of this section that it believes may be evidence of fiduciary breaches that involve plan assets by a prior plan fiduciary, the bankruptcy trustee shall report such activity to the Employee Benefits Security Administration in a time and manner specified in instructions developed by the Office of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor.

(iii) *Participant notification.* In lieu of the statement required by paragraph (d)(2)(vi)(A)(*2*) of this section, the notice shall include a statement that the plan sponsor is in liquidation under chapter 7 of title 11 of the United States Code and, therefore, the plan has been terminated by the bankruptcy trustee (or its eligible designee).

(iv) *Final notice.* In lieu of the content requirements in paragraph (d)(2)(ix)(A) of this section (relating to the qualified termination administrator), the final notice shall include, the name, address (including email address), and telephone number of the bankruptcy trustee and, if applicable, the name, EIN, address (including email address), and telephone number of the eligible designee.

(v) *Distributions.* Paragraph (d)(2)(vii)(C) of this section (relating to the ability of a qualified termination administrator to designate itself as the transferee of distribution proceeds in accordance with § 2550.404a–3) is not applicable in the case of a qualified termination administrator that is the plan sponsor's bankruptcy trustee.

(vi) *Pay reasonable expenses.* (A) If the bankruptcy trustee is the qualified termination administrator, in lieu of the requirements in paragraph (d)(2)(v)(B)(*2*) of this section, expenses shall be consistent with industry rates for such or similar services ordinarily charged by qualified termination administrators defined in paragraph (g) of this section.

(B) If the bankruptcy trustee designates an eligible designee, as defined in paragraph (j)(1)(ii) of this section, to serve as the qualified termination administrator, the requirements in paragraph (d)(2)(v) of this section (as opposed to the requirements in paragraph (j)(3)(vi)(A) of this section) apply to expenses that the eligible designee pays to itself or others.

(C) The eligible designee may pay, from plan assets, the bankruptcy trustee for reasonable expenses incurred in selecting and monitoring the eligible designee.

(4) The bankruptcy trustee or eligible designee shall not, through waiver or otherwise, seek a release from liability under ERISA, or assert a defense of derived judicial immunity (or similar defense) in any action brought against the bankruptcy trustee or eligible designee arising out of its conduct under this regulation.

BILLING CODE 4510–29–P

APPENDIX A TO § 2578.1

NOTICE OF INTENT TO TERMINATE PLAN

[*Date of notice*]

[*Name of plan sponsor*]
[*Last known address of plan sponsor*]

Re: [*Name of plan and account number or other identifying information*]

Dear [*Name of plan sponsor*]:

We are writing to advise you of our concern about the status of the subject plan. Our intention is to terminate the plan and distribute benefits in accordance with federal law if you do not contact us within 30 days of your receipt of this notice. See 29 CFR 2578.1.

Our basis for taking this action is that our records reflect that there have been no contributions to, or distributions from, the plan within the past 12 months. *{If the basis for sending this notice is under § 29 CFR 2578.1(b)(1)(i)(B), complete and include the sentence below rather than the sentence above.}* Our basis for taking this action is *{provide a description of the facts and circumstances indicating plan abandonment}*.

We are sending this notice to you because our records show that you are the sponsor of the subject plan. The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for all costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan by us will not relieve you of your liability for any such costs, penalties, taxes, etc. Federal law also requires us to notify the U.S. Department of Labor, Employee Benefits Security Administration, of the termination of any abandoned plan. For information about the federal law governing the termination of abandoned plans, you may contact the U.S. Department of Labor at 1.866.444.EBSA (3272).

Please contact [*name, address, and telephone number of the person, office, or department that the sponsor must contact regarding the plan*] within 30 days in order to prevent this action.

Sincerely,

[*Name and address of qualified termination administrator or appropriate designee*]

APPENDIX B To § 2578.1
PLANS FOUND ABANDONED PURSUANT TO 29 CFR 2578.1(b)

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[*Name*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[*Telephone number*]
	[*Telephone number*]	[*EIN*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(b), we have determined that the subject plan is or may become abandoned by its sponsor. We are eligible to serve as a Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.

We find that {*check the appropriate box below and provide additional information as necessary*}:

☐ There have been no contributions to, or distributions from, the plan for a period of at least 12 consecutive months immediately preceding the date of this letter. Our records indicate that the date of the last contribution or distribution was {*enter appropriate date*}.

☐ The following facts and circumstances suggest that the plan is or may become abandoned by the plan sponsor {*add description below*}:

_____
_____
_____
_____

We have also determined that the plan sponsor {*check appropriate box below*}:

☐ No longer exists

☐ Cannot be located

☐ Is unable to maintain the plan

We have taken the following steps to locate or communicate with the known plan sponsor and have received no objection {*provide an explanation below*}:

_____

_____

_____

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]

2. Plan assets held by Qualified Termination Administrator:
   A. Estimated value of assets: [*value*]
   B. Months we have held plan assets, if less than 12: [*number*]
   C. Hard to value assets {*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*}:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

_____

_____

_____

4. Other:

_____

_____

_____

Part II – Known Service Providers of the Plan

Name	Address	Telephone
1.		
2.		
3.		

Part III – Services and Related Expenses to be Paid

Services	Service Provider	Estimated Cost
1.		
2.		
3.		

Part IV – Contact Person {*enter information only if different from signatory*}:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

APPENDIX C To § 2578.1
PLANS FOUND ABANDONED PURSUANT TO 29 CFR 2578.1(j)

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[N*ame*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[*Telephone number*]
	[*Telephone number*]	[*EIN*]

{*If applicable, include and complete the following pursuant to 29 CFR 2578.1(j)(2)(i) unless the same as Qualified Termination Administrator information above*}:

Bankruptcy Trustee
[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(j)(1), the subject plan is considered abandoned because the sponsor of the plan is in liquidation pursuant to a chapter 7 bankruptcy proceeding.

{*Insert as applicable*: [I have been appointed to administer the plan sponsor's case under chapter 7 of the U.S. Bankruptcy Code, and attached is a copy of the notice or order entered in the case reflecting my appointment. As the bankruptcy trustee administering this case, I am eligible to serve as Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.]
or
[A bankruptcy trustee has been appointed to administer the plan sponsor's case under chapter 7 of the U.S. Bankruptcy Code, and attached is a copy of the notice or order entered in the case

reflecting the trustee's appointment. We have been designated by the bankruptcy trustee and are eligible to serve as Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.]}

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]
2. Name, EIN, address and email address of the entity holding plan assets (if the entity is not the QTA):

_____

_____

_____

A. Estimated value of plan assets as of the date of the entry of an order for relief under chapter 7 of the U.S. Bankruptcy Code: [*value*]

B. Months entity has held plan assets, if less than 12: [*number*]

C. Hard to value assets {*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*}:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

_____

_____

_____

4. Other:

_____

_____

_____

Part II – Known Service Providers of the Plan

	Name	Address	Telephone
1.			
2.			
3.			

Part III – Services and Related Expenses to be Paid

Services	Service Provider	Estimated Cost
1.		
2.		
3.		

Part IV – Contact Person {*enter information only if different from signatory*}:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

APPENDIX D TO § 2578.1

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

{*Insert as applicable* [We are] *or* [I am]} writing to inform you that the [*name of plan*] (Plan) has been terminated pursuant to regulations issued by the U.S. Department of Labor. The Plan was terminated because it was abandoned by [*name of the plan sponsor*]. {*For plans abandoned pursuant to 29 CFR 2578.1(j)(1), replace the sentence immediately preceding with the sentence immediately following*}: The Plan was terminated because [name of the plan sponsor] is in bankruptcy and the business is shutting down.

We have determined that you have an interest in the Plan, either as a plan participant or beneficiary. Your account balance on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating the Plan and distributing your benefits.

Your distribution options under the Plan are {*add a description of the Plan's distribution options*}. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is {*enter a description of the election process established by the qualified termination administrator*}.

{*Select the next paragraph from options 1 through 3, as appropriate.*}

{*Option 1: If this notice is for a participant or beneficiary, complete and include the following paragraph provided the account balance does not meet the conditions of §2550.404a-3(d)(1)(iii) or (iv).*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary) maintained by {*insert the name, address, and phone number of the provider if known, otherwise insert the following language* [a bank or insurance company or other similar financial institution]}. Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence*: Should your money be transferred into an individual retirement plan, [*name of the financial institution*] charges the following fees for its services:

{*add a statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*}.}

{*Option 2: If this notice is for a participant or beneficiary whose account balance meets the conditions of §2550.404a-3(d)(1)(iii) or (iv), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, and your account balance is $1,000 or less, federal law permits us to transfer your balance to an interest-bearing federally insured bank account, to the unclaimed property fund of the State of your last known address, or to an individual retirement plan (inherited individual retirement plan in the case of a nonspouse beneficiary). Pursuant to federal law, your money, if transferred to an individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If known, include the name, address, and telephone number of the financial institution or State fund into which the individual's account balance will be transferred or deposited. If the individual's account balance is to be transferred to a financial institution and fee information is known, include the following sentence*: Should your money be transferred into a plan or account, [*name of the financial institution*] charges the following fees for its services: {*add a statement of fees, if any, that will be paid from the individual's account*}.}

{*Option 3: If this notice is for a participant or participant's spouse whose distribution is subject to the survivor annuity requirements in sections 401(a)(11) and 417 of the Internal Revenue Code (or section 205 of ERISA), complete and include the following paragraph.*}

If you do not make an election within 30 days from your receipt of this notice, your account balance will be distributed in the form of a qualified joint and survivor annuity or qualified preretirement annuity as required by the Internal Revenue Code. {*If the name of the annuity provider is known, include the following sentence*: The name of the annuity provider is [*name, address and phone number of the provider*].}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the qualified termination administrator and, if different, the name, address, and telephone number of the appropriate contact person*].

Sincerely,
[*Name of qualified termination administrator or appropriate designee*]

APPENDIX E To § 2578.1

FINAL NOTICE

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW, Suite 600
Washington, DC, 20210

Re: Plan Identification
[*Plan name and plan number*]
[*Plan account number*]
[*EIN*]

Qualified Termination Administrator
[*Name*]
[*Address and e-mail address*]
[*Telephone number*]
[*EIN*]

{*If applicable, complete and include the following pursuant to 29 CFR 2578.1(j)(3)(iv) unless the same as Qualified Termination Administrator information above* }:

Bankruptcy Trustee
[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Abandoned Plan Coordinator:

General Information

The termination and winding-up process of the subject plan has been completed pursuant to 29 CFR 2578.1. Benefits were distributed to participants and beneficiaries on the basis of the best available information pursuant to 29 CFR 2578.1(d)(2)(i). Plan expenses were paid out of plan assets pursuant to 29 CFR 2578.1(d)(2)(v) or 29 CFR 2578.1(j)(3)(vi).

{*Include and complete the next section, entitled "Contact Person," only if the contact person is different from the signatory of this notice.*}

Contact Person

[*Name*]
[*Address and e-mail address*]
[*Telephone number*]

{*Include and complete the next section, entitled "Expenses Paid" only if fees and expenses paid by the plan exceeded by 20 percent or more the estimate required by 29 CFR 2578.1(c)(3)(v)(B) or 29 CFR 2578.1(j)(2)(v)(B).*}

Expenses Paid

The actual fees and/or expenses paid in connection with winding up the Plan exceeded by {*insert either*: [20 percent or more] *or* [*enter the actual percentage*]} the estimate required by 29 CFR 2578.1(c)(3)(v)(B) or 29 CFR 2578.1(j)(2)(v)(B). The reason or reasons for such additional costs are {*provide an explanation of the additional costs*}.

Other

_____
_____
_____

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]
Attachment

Signed at Washington, DC, this 3rd day of December, 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2012–29500 Filed 12–11–12; 8:45 am]

BILLING CODE 4510–29–C

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 239 December 12, 2012

Part III

The President

Executive Order 13631—Reestablishment of Advisory Group

Federal Register
Vol. 77, No. 239
Wednesday, December 12, 2012

Presidential Documents

Title 3—

The President

Executive Order 13631 of December 7, 2012

Reestablishment of Advisory Group

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 4001 of the Patient Protection and Affordable Care Act (Public Law 111–148), 42 U.S.C. 300u–10, it is hereby ordered as follows:

Section 1. *Reestablishing the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health*. The Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (Advisory Group), as set forth under the provisions of Executive Order 13544 of June 10, 2010, and continued by section 2 of Executive Order 13591 of November 23, 2011, is hereby reestablished and shall terminate on September 30, 2013, unless extended by the President. The same members who were serving on the Advisory Group on September 30, 2012, are hereby reappointed to the Advisory Group as reestablished by this order, as if the Advisory Group had continued without termination through the date of this Executive Order.

Sec. 2. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
Washington, December 7, 2012.

[FR Doc. 2012–30170
Filed 12–11–12; 11:15 am]
Billing code 3295–F3

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