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

WHEN: Tuesday, April 9, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2012–0745; Special Condition No. 33–012–SC]

Special Conditions: GE Aviation CT7–2E1 Turboshaft Engine Model

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are issued for the General Electric Aviation (GE) CT7–2E1 engine model. This engine model will have a novel or unusual design feature, which is a combination of two existing ratings into a new rating called "flat 30-second and 2-minute OEI" rating. This rating is intended for the continuation of flight of a multi-engine rotorcraft after one engine becomes inoperative. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These final special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 11, 2013.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule, contact Dorina Mihail, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7153; facsimile (781) 238–7199; email *dorina.mihail@faa.gov*. For legal questions concerning this rule, contact Vincent Bennett, ANE–7, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; email *vincent.bennett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2009, GE applied for an amendment to type certificate E8NE to add the new CT7–2E1 turboshaft engine model. The CT7–2E1 engine model is a derivative of the CT7 engine family certified between 1977 and 2010. It is a free turbine turboshaft designed for a transport category twin-engine helicopter. The CT7–2E1 engine model will incorporate a novel and unusual feature, which is the "flat 30-second and 2-minute OEI" rating. The applicant requested this rating to provide the increased power required for the rotorcraft performance. A special condition is necessary to apply additional requirements for the rating's definition, overspeed, controls system, and endurance test, because the applicable airworthiness standards do not contain adequate or appropriate airworthiness standards to address this design feature.

The "flat 30-second and 2-minute OEI" rating is equivalent in some regards with the 2½-minute OEI rating, and in other regards with the 30-second OEI and the 2-minute OEI ratings. However, the new rating differs from the 2½-minute OEI rating because it limits the number of occurrences per flight and mandates post-flight inspection and maintenance actions. The new rating is similar with the combined or joined 30-second OEI and 2-minute OEI ratings when they are equal. However, the existing standards are not adequate for this combination.

Similar to the "flat 30-second and 2-minute OEI" rating, the 30-second and 2-minute OEI ratings were introduced to provide multi-engine rotorcraft with high power for short periods of time when an engine becomes inoperative during critical flight conditions. Existing airworthiness standards for the 30-second OEI and 2-minute OEI ratings were established based on the assumption the two ratings will be selected together as a package, and that the 30-second OEI rating is higher than the 2-minute OEI rating. Because the 30-second OEI rating was assumed higher, specific requirements were established for only this rating and for the 30 second time period. When the 30-second and 2-minute OEI ratings are equal, these requirements must be extended to a total period of 2.5 minutes.

These final special conditions for the "flat 30-second and 2-minute OEI" rating are based on a combination of existing regulations for the 2½-minute OEI rating, and the 30-second and 2-minute OEI ratings. Under the provisions of § 21.101(d), the special conditions must provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

We determined that the type certification basis for the GE CT7–2E1 engine model is up to and including Amendment 20 of part 33; refer to the section below titled "Type Certification Basis." We also determined that the part 33 standards, up to and including Amendment 25, contain part of the standards for the "flat 30-second and 2-minute OEI." Therefore, we do not prescribe special conditions when the requirements exist in later amendments, instead we will apply these later amendments. These later requirements are:

(1) Section A33.4, Airworthiness Limitations Section, paragraphs (b)(1) and (b)(2) of Amendments 1–25, and

(2) Section 33.5, Instruction manual for installing and operating the engine, paragraph (b)(4) of Amendments 1–25.

These final special conditions are in addition to the requirements of the 30-second and 2-minute OEI ratings that remain applicable to the "flat 30-second and 2-minute OEI" rating, as follows:

(1) These final special conditions extend the standards applicable to the 30-second or 2-minute OEI ratings for the 2.5 minute time duration of the "flat 30-second and 2-minute OEI" rating. We developed these special conditions by revising the time dependent requirements of §§ 33.27, 33.87(a)(7), and 33.88(c). The 2.5 minute time duration for the rating would affect the structural and operational characteristics of the engine that are time dependent, such as the values for transients, time duration for stabilization to steady state, and part growth due to deformation. In addition, these special conditions are applied by extending the 30-second OEI rating requirements of § 33.67(d) for automatic availability and control of the engine power, from 30 seconds to 2.5 minutes.

(2) These final special conditions are required to account for the proposed rating of a 2.5 minute time duration during the endurance test. For the 30-second and 2-minute OEI ratings, the test schedule of § 33.87(f) is divided among the two ratings. We applied these special conditions by revising the requirements of § 33.87(f) to ensure the test will run for a 2.5 minute duration with no interruption.

Type Certification Basis

Under the provisions of 14 CFR 21.101(a), GE must show the CT7–2E1 turboshaft engine model meets the provisions of the applicable regulations in effect on the date of application, except as detailed in § 21.101(b) and (c). We have determined the following certification basis for the CT7–2E1 turboshaft engine model.

(1) 14 CFR part 33, "Airworthiness Standards: Aircraft Engines," dated February 1, 1965, with Amendments 1 through 20, except §§ 33.5(b)(4), A33.4(b)(1), and A33.4(b)(2), Amendments 1–25 applicable to the "flat 30-second and 2-minute OEI" rating. The applicant will voluntarily comply with § 33.28, Amendments 1–28 for the EECU, FMU, and AISBV.

(2) 14 CFR part 34, Amendments 1 through 4, § 34.11 "Standard for Fuel Venting Emissions."

Under the provisions of 14 CFR 21.101(d), if we find the regulations in effect, on the date of the application for the change, do not provide adequate standards with respect to the proposed change because of a novel or unusual design feature, the applicant must also comply with special conditions, and amendments to those special conditions prescribed under the provisions of § 21.16 to provide a level of safety equal to that established by the regulations in effect on the date of the application for the change.

We issue special conditions, as defined by 14 CFR 11.19, under 14 CFR 11.38, which become part of the type certification basis as specified in §§ 21.17(a)(2) or 21.101(d).

Special conditions are initially applicable to the engine model for which they are issued. If the type certificate for that model is amended later, to include another related model that incorporates the same or similar novel or unusual design feature, or if any other model already included on the same type certificate is modified to incorporate the same or similar novel or unusual design feature, these special conditions may also apply to the other model.

Novel or Unusual Design Features

The CT7–2E1 turboshaft engine model will incorporate a "flat 30-second and 2-minute OEI" rating for use after the failure or shutdown of one engine and for up to three periods of 2.5 minutes each on any one flight. These final special conditions, discussed below, for the "flat 30-second and 2-minute OEI" rating will address this novel and unusual design feature.

Discussion of Comments

A notice of proposed special conditions, No. 33–12–01–SC, for the CT7–2E1 turboshaft engine model was published on July 20, 2012 (77 FR 42677). We received six comments from European Aviation Safety Agency (EASA) and two from Honeywell. One comment from EASA resulted in changes to the special conditions; the remaining comments resulted in clarifications.

The EASA commented that the special conditions for the overspeed test of § 33.27 should not be the same as the requirements applicable to the 2½-minute OEI rating. EASA considers that applying the overspeed test requirements associated with the 30-second and 2-minute OEI ratings would be more appropriate.

We partially agree. We agree the requirements for the 30-second and 2-minute OEI ratings are more appropriate, except for the test time duration requirement. For the CT7 engine model, the overspeed requirements for the 30-second and 2-minute OEI ratings reside in the special conditions 33–002–SC, published on May 28, 1999 (64 FR 28900). We are therefore adopting these requirements, except that the time duration of paragraph (a) of 33–002–SC is increased from 2.5 minutes to 5 minutes in these final special conditions. The rationale is that the test time duration should be representative of the rating duration, which is 2.5 minutes at the flat 30-second and 2-minute OEI rating versus 30 seconds at the 30-second OEI. Also, the 5 minutes test time is the same as that applied to the 2½-minute OEI rating, which is a rating of the same time duration.

The EASA commented that amendments to §§ 33.67(d) and 33.28(k) are discussed, despite not being addressed under the part 33 requirements section of the proposed special conditions. The EASA found this section unclear and suggested that additional clarification be provided.

We agree. We eliminated the references to § 33.28(k) and assigned the special conditions to § 33.67(d), instead of § 33.28(k). This resulted in no change to the proposed special conditions themselves because § 33.28(k), Amendment 26 and § 33.67(d) Amendment 18, contain the same requirements.

Honeywell and EASA provided comments related to the "Note" in the proposed special conditions paragraph (c)(1). The note addressed the intent for temperature stabilization. Honeywell recommended revising the note for clarity. The EASA stated that the note is confusing.

We agree. We determined the note is not necessary and removed the note in the final special conditions.

The EASA commented that for the overtemperature tests of § 33.88, the existing requirements are for a 4 minute demonstration at 35 degrees F, hotter than the maximum temperature limit for the 30 second OEI rating. The proposed special conditions, however, amend this requirement by increasing this demonstration to 5 minutes duration. The EASA does not see the technical grounds for this increase in severity.

We do not agree. The 4 minute test duration applies to ratings of 2 minutes and shorter. The 5 minute test duration applies to ratings longer than 2 minutes. Since the flat 30-second and 2-minute OEI is a rating of 2.5 minutes length, the test time requirements should be a 5 minute duration; the same as that for the 2½-minute OEI.

The EASA commented on the applicability of Appendix A to part 33, A33.4 (b)(1) to the flat 30-second and 2-minute OEI rating. Specifically, that the flat 30-second and 2-minute OEI rating is a single rating, while the requirement of A33.4 (b)(1) applies to either 30-second OEI or 2-minute OEI ratings. EASA stated that the existing requirements are written for the existing ratings and not for the 'new' rating introduced by these special conditions, therefore, is not clear whether these requirements are relevant to the 'new' rating.

We do not agree. The airworthiness standards of Appendix A to part 33, A33.4(b)(1) for the 30-second OEI and 2-minute OEI ratings were established based on the assumption that the two ratings will be selected together as a package. Paragraph A33.4(b)(1) does not prescribe specific requirements for the 30-second OEI versus 2-minute OEI ratings and provides requirements for the use of both ratings. Therefore, A33.4(b)(1) requirements for maintenance actions associated with the use of the 30-second and 2-minute OEI ratings apply to the new rating.

Honeywell provided a comment related to the naming of the rating.

which, although recognizable, appears cumbersome. Honeywell suggested that, "Rated limited use 2½-minute OEI" could be a better definition that would still distinguish it from the existing unlimited use of the 30-second, 2-minute, and 2½-minute OEI ratings.

We do not agree. The applicant requested the new rating be named in closer relation with the 30-second and 2-minute OEI ratings for consistency across existing engine models and to align the new rating with the 30-second and 2-minute-OEI ratings at the rotorcraft level. We agree with the applicant's proposed name. We also do not agree with the commenter that the 30-second and 2-minute OEI ratings are "unlimited use." These ratings are limited to a maximum use of 3 times per flight and require post-flight inspection, per 14 CFR 1.1, Definitions.

Applicability

These special conditions are applicable to the GE CT7–2E1 turboshaft engine model. If GE applies later for a change to the type certificate, to include another closely related model incorporating the same novel or unusual design feature, these special conditions would apply to that model, as well. This is true, provided the certification basis is the same or contains later amendments that satisfy the certification basis discussed in the section titled, "Type Certification Basis."

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting these special conditions. This action affects certain novel or unusual design features on the CT7–2E1 turboshaft engine model. It is not a rule of general applicability and applies only to GE, whom requested FAA approval for this engine feature.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, the FAA issues the following special conditions as part of the type certification basis for the GE CT7–2E1 turboshaft engine model.

1. Part 1 Definitions

Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, the following definition applies: "Rated Flat 30-second and 2-minute One Engine Inoperative (OEI) Power," with respect to rotorcraft turbine engines, means: (1) A rating for which the shaft horsepower and associated operating limitations of the 30-second OEI and 2-minute OEI ratings are equal, and (2) the shaft horsepower is that developed under static conditions at the altitude and temperature for the hot day, and within the operating limitations established under part 33. The rating is for continuation of one flight operation after the failure or shutdown of one engine in multiengine rotorcraft. The rating is for up to three periods of use no longer than 2.5 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

2. Part 33 Requirements

(a) In addition to the airworthiness standards in the type certification basis applicable to the engine and the 30-second and 2-minute OEI ratings, the special conditions in this section apply.

(b) Section 33.7 Engine ratings and operating limitations. Flat 30-second and 2-minute OEI rating and operating limitations are established by power, torque, rotational speed, gas temperature, and time duration.

(c) Section 33.27 Turbine, compressor, fan, and turbosupercharger rotor overspeed. In addition to the requirements of § 33.27(b):

(1) The turbine and compressor rotors must have sufficient strength to withstand the test conditions specified in paragraph (2) below.

(2) The applicant must determine, by analysis or other acceptable means, the most critically stressed rotor component of each turbine and compressor, including integral drum rotors and centrifugal compressors. These components must be tested for the conditions in paragraphs (i) or (ii) below. The test selection from the following paragraphs (i) or (ii) below is determined by the speed defined in paragraph (i)(B) or (ii)(B), whichever is higher.

(i) Test for a period of 5 minutes:

(A) At its maximum operating temperature, except as provided in § 33.27(c)(2)(iv); and

(B) At the highest speed determined, in accordance with § 33.27(c)(2)(i) through (iv).

(C) This test may be performed using a separate test vehicle as desired.

(ii) Test for a period of 5 minutes:

(A) At its maximum operating temperature, except as provided in paragraph (ii)(C) below; and

(B) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor, or system, in a representative installation of the engine when operating at the flat 30-second and 2-minute OEI rating conditions; and

(C) The test speed must take into account minimum material properties, maximum operating temperature, if not tested at that temperature, and the most adverse dimensional tolerances.

(D) This test may be performed using a separate test vehicle as desired. Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition are permitted provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the FAA.

(d) Section 33.67(d) Fuel system. Engines must incorporate a means, or a provision for a means, for automatic availability and automatic control of the flat 30-second and 2-minute OEI power for the duration of 2.5 minutes and within the declared operating limitations.

(e) Section 33.87 Endurance test. The requirements applicable to 30-second and 2-minute OEI ratings, except for:

(1) The test of § 33.87(a)(7) as applicable to the 2½-minute OEI rating.

(2) The tests in § 33.87(f)(2) and (3) must be run continuously for the duration of 2.5 minutes, and

(3) The tests in § 33.87(f)(6) and (7) must be run continuously for the duration of 2.5 minutes.

(f) Section 33.88 Engine overtemperature test. The requirements of § 33.88(c), except that the test time is 5 minutes instead of 4 minutes.

Issued in Burlington, Massachusetts on March 4, 2013.

Robert J. Ganley,

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

[FR Doc. 2013–05676 Filed 3–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0689; Directorate Identifier 2009–SW–065–AD; Amendment 39–17301; AD 2012–26–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft-Manufactured Model S–64F Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation-manufactured Model S–64F helicopters, now under the Erickson Air-Crane Incorporated (Erickson) Model S–64F type certificate. This AD supersedes an existing AD which requires inspections, rework, and replacement, if necessary, of the main gearbox (MGB) second stage lower planetary plate (plate). Since we issued that AD, the manufacturer has conducted a configuration review and analysis, and a review of the service history of certain components. The actions of this AD are intended to establish life limits for certain components, remove various parts from service, and require consistency in the part numbers of certain four bladed tail rotor (T/R) assemblies to prevent fatigue cracking, failure from static overload, and subsequent loss of control of the helicopter.

DATES: This AD is effective April 16, 2013.

ADDRESSES: For service information identified in this AD, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/Compliance Officer, 3100 Willow Springs Rd., P.O. Box 3247, Central Point, OR 97502, telephone (541) 664–5544, fax (541) 664–2312, email address *cerickson@ericksonaircrane.com*. You may review a copy of 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: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76137, telephone (817) 222–5170, email *7-avs-asw-170@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On June 29, 2012, at 77 FR 38744, 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 Sikorsky Aircraft Corporation-manufactured Model S–64F helicopters, now under the Erickson Air-Crane Incorporated Model S–64F type certificate. That NPRM proposed to supersede existing AD 97–10–15 (62 FR 28321, May 23, 1997), to require reducing or establishing the life limits for certain flight-critical components, removing other parts with service difficulties from service, and require that T/R blade assembly, P/N 65160–00001–048, be installed only as a set of four and not be installed with another part-numbered blade. The proposed requirements were intended to prevent a fatigue crack in a flight critical component, which could result in component failure from static overload and subsequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 38744, June 29, 2012).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed except for minor editorial changes to meet current publication requirements. These minor editorial changes are consistent with the intent of the proposals in the NPRM (77 FR 38744, June 29, 2012) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information

Erickson Service Bulletin No. 64F General-1, Rev. 17, contains the Airworthiness Limitations Schedule for the Model S–64F helicopter and lists the parts and assemblies with their specified retirement lives.

Costs of Compliance

We estimate that this AD will affect 7 helicopters of U.S. Registry and estimate, at an average labor rate of $85 per hour, the following costs for removing from service the parts listed in Table 2 of this AD:

- Reviewing helicopter records to determine if an affected part is installed will require approximately 2 work-hours, for a cost per helicopter of $170 and a fleet cost of $1,190.
- Replacing the rotary rudder spindle assembly will require 10 work-hours and a parts cost of $2,787, for a cost per helicopter of $3,637 and a fleet cost of $25,459.
- Replacing the plate will require 40 work-hours and a parts cost of $43,750, for a cost per helicopter of $47,150 and a fleet cost of $330,050.
- Replacing the main servo bracket assembly will require 2 work-hours and a parts cost of $5,223, for a cost per helicopter of $5,393 and a fleet cost of $37,751.
- Replacing the primary servo link assembly of the M/R tandem servo will require 10 work-hours and a parts cost of $14,533, for a cost per helicopter of $15,383 and a fleet cost of $107,681.
- Replacing the T/R shoulder bolt will require 10 work-hours and a parts cost of $571, for a cost per helicopter of $1,421 and a fleet cost of $9,947.
- Replacing the T/R Blade Assembly will require 8 work-hours and a parts cost of $125,765 for a cost per helicopter of $126,445 and a fleet cost of $885,115.
- The total cost to replace the parts that are required to be removed from service is estimated to be $199,599 per helicopter and a fleet cost of $1,397,193.

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 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 removing Amendment 39–10028 (62 FR 28321, May 23, 1997) and adding the following new airworthiness directive (AD):

2012–26–06 ERICKSON AIR-CRANE INCORPORATED: Amendment 39–17301; Docket No. FAA–2012–0689; Directorate Identifier 2009–SW–065–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation-manufactured Model S–64F helicopters, now under the Erickson Air-Crane Incorporated Model S–64F type certificate, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a fatigue crack in a flight critical component. This condition could result in component failure from static overload and subsequent loss of control of the helicopter.

(c) Other Affected ADs

This AD supersedes AD 97–10–15, Amendment 39–10028 (62 FR 28321, May 23, 1997).

(d) Effective Date

This AD becomes effective April 16, 2013.

(e) 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.

(f) Required Actions

(1) Before further flight:

(i) Remove from service any part with a number of hours time-in-service (TIS) equal to or greater than the part's retirement life as stated in Table 1 to Paragraph (f) of this AD.

TABLE 1 TO PARAGRAPH (f)—PARTS WITH NEW OR REVISED LIFE LIMITS

Part name	Part No. (P/N)	Retirement life
Main Rotor (M/R) Blade Assembly	6415–20601–045	13,280 hours TIS.
Main Transmission Support Beam Assembly, LH	6420–62363–045	9,300 hours TIS.
Main Transmission Support Beam Assembly, RH	6420–62363–046	9,300 hours TIS.
Left Splice Fitting (Transition Fitting), Rotary, Rudder Boom	6420–66341–101	8,300 hours TIS.
Right Splice Fitting (Transition Fitting), Rotary, Rudder Boom	6420–66341–102	8,300 hours TIS.
M/R Drive Shaft	6435–20536–101	2,200 hours TIS.
Pressure Plate Assembly, Rotary Wing Head	65101–11016–042	8,800 hours TIS.
Horn and Liner Assembly	65102–11047–041	1,140 hours TIS.
Lower Hub Plate Assembly	65103–11009–041	15,500 hours TIS.
Horizontal Hinge Pin, Rotary Wing Head	65103–11020–103	5,100 hours TIS.
Damper Bracket Assembly, Rotary Wing Head	65103–11032–043	20,000 hours TIS.
Hub Subassembly, Rotary Wing	65103–11310–043	21,600 hours TIS.
Shaft Assembly, Pitch Control Tail Gearbox	65358–07035–043	9,400 hours TIS.
Rod End Assembly, Primary Servo Assembly	65652–11212–041	20,800 hours TIS.

Note 1 to Table 1 to Paragraph (f) of this AD: The list of parts in Table 1 to Paragraph (f) of this AD contains only a portion of the life-limited parts for this model helicopter and is not an all-inclusive list.

(ii) Revise the retirement life of each part as shown in Table 1 to Paragraph (f) of this AD by making pen and ink changes or by inserting a copy of this AD into the Airworthiness Limitations section of the maintenance manual.

(iii) Record on the component history card or equivalent record the retirement life for each part as shown in Table 1 to Paragraph (f) of this AD.

(2) Before further flight, remove from service any part with a P/N listed in Table 2 to Paragraph (f) of this AD, regardless of the part's TIS. The P/Ns listed in Table 2 to Paragraph (f) of this AD are not eligible for installation on any helicopter.

TABLE 2 TO PARAGRAPH (f)—PARTS TO BE REMOVED FROM SERVICE

Part name	P/N
Spindle Assembly, Rotary Rudder	6410–30302–041.
Main Gearbox Second Stage Lower Planetary Plate	6435–20516–101 or 6435–20516–102.
Bracket Assembly, Main Servo	6435–20527–041 or 6435–20527–042.
Primary Servo Link, Tandem Servo, M/R	6465–62161–042.
Shoulder Bolt, Tail Rotor (T/R)	65111–07001–102.
T/R Blade Assembly	65161–00001–041.

(3) Before further flight, if a T/R blade assembly, P/N 65160–00001–048, is installed, remove any of the other three T/R blade assemblies that have a different P/N and replace it with a T/R blade assembly, P/N 65160–00001–048. The T/R blade assembly,
P/N 65160–00001–048, must be installed in sets of four only.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76137, telephone (817) 222–5170, email *7-avs-asw-170@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.

(h) Additional Information

Erickson Service Bulletin No. 64F General-1, Revision 17, dated August 17, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/Compliance Officer, 3100 Willow Springs Rd, P.O. Box 3247, Central Point, OR 97502, telephone (541) 664–5544, fax (541) 664–2312, email address *cerickson@ericksonaircrane.com*. You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6300: Main Rotor Drive System and 6400: Tail Rotor System).

Issued in Fort Worth, Texas, on March 1, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–05503 Filed 3–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM11–6–000]

Annual Update to Fee Schedule for the Use of Government Lands by Hydropower Licensees

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update to fee schedule.

SUMMARY: In accordance with the Commission's regulations, the Commission, by its designee, the Executive Director, issues this annual update to the fee schedule which lists per-acre rental fees by county (or other geographic area) for use of government lands by hydropower licensees.

DATES: This rule is effective March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Norman Richardson, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6219, *Norman.Richardson@ferc.gov*.

SUPPLEMENTARY INFORMATION:

142 FERC ¶ 62,166

Issued February 27, 2013.

Section 11.2 of the Commission's regulations provides a method for computing reasonable annual charges for recompensing the United States for the use, occupancy, and enjoyment of its lands by hydropower licensees.[1] Annual charges for the use of government lands are payable in advance, and are based on an annual schedule of per-acre rental fees published in Appendix A to Part 11 of the Commission's regulations.[2] This document updates the fee schedule in Appendix A to Part 11 for fiscal year 2013 (October 1, 2012, through September 30, 2013).

Effective Date

This Final Rule is effective March 12, 2013. The provisions of 5 U.S.C. 804, regarding Congressional review of final rules, do not apply to this Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. This Final Rule merely updates the fee schedule published in the Code of Federal Regulations to reflect scheduled adjustments, as provided for in section 11.2 of the Commission's regulations.

List of Subjects in 18 CFR Part 11

Public lands.

By the Director.

Anton C. Porter,

Director, Office of the Executive Director.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, *Code of Federal Regulations*, as follows.

[1] *Annual Charges for the Use of Government Lands*, Order No. 774, 78 FR 5256 (January 25, 2013), FERC Stats. & Regs. ¶ 31,341 (2013).

[2] 18 CFR Part 11 (2012).

PART 11—[AMENDED]

■ 1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352.

■ 2. Appendix A to Part 11 is added to read as follows:

APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 2013

State	County	Fee/acre/Yr
Alabama	Autauga	$53.06
	Baldwin	89.12
	Barbour	48.00
	Bibb	61.16
	Blount	87.24
	Bullock	55.08
	Butler	58.11
	Calhoun	86.56
	Chambers	49.30
	Cherokee	59.31
	Chilton	75.66
	Choctaw	46.85
	Clarke	44.72
	Clay	63.88
	Cleburne	83.84
	Collee	59.17
	Colbert	58.82
	Conecuh	49.98
	Coosa	56.88
	Covington	61.08
	Crenshaw	58.08
	Cullman	101.36
	Dale	57.51
	Dallas	44.94
	DeKalb	94.36
	Elmore	71.03
	Escambia	57.43
	Etowah	82.01
	Fayette	46.33
	Franklin	57.56
	Geneva	56.31
	Greene	42.14
	Hale	49.85
	Henry	49.49
	Houston	57.92
	Jackson	57.45
	Jefferson	93.62
	Lamar	38.84
	Lauderdale	63.48
	Lawrence	70.94
	Lee	82.09
	Limestone	72.47
	Lowndes	44.45
	Macon	51.29
	Madison	72.96
	Marengo	45.68
	Marion	54.86
	Marshall	101.03
	Mobile	87.13
	Monroe	48.84
	Montgomery	53.09
	Morgan	77.98
	Perry	43.58
	Pickens	51.13
	Pike	59.09
	Randolph	66.04
	Russell	59.58
	St. Clair	96.10
	Shelby	101.11
	Sumter	39.30
	Talladega	63.37
	Tallapoosa	67.48
	Tuscaloosa	67.32
	Walker	68.49
	Washington	57.62
	Wilcox	37.67
	Winston	70.53
Alaska	Aleutian Islands Chain.	1.52

State	County	Fee/acre/Yr
	Anchorage BLM District.	85.41
	Fairbanks BLM District.	18.77
	Juneau Area	1,316.83
	Kenai Peninsula	32.05
	All Areas	9.44
Arizona	Apache	2.56
	Cochise	25.13
	Coconino	2.60
	Gila	5.01
	Graham	7.26
	Greenlee	30.88
	La Paz	14.30
	Maricopa	111.99
	Mohave	7.43
	Navajo	3.64
	Pima	5.88
	Pinal	47.94
	Santa Cruz	30.19
	Yavapai	23.44
	Yuma	110.18
Arkansas	Arkansas	50.21
	Ashley	55.16
	Baxter	65.93
	Benton	117.83
	Boone	65.26
	Bradley	69.35
	Calhoun	52.35
	Carroll	61.10
	Chicot	42.47
	Clark	50.18
	Clay	53.65
	Cleburne	68.03
	Cleveland	85.17
	Columbia	59.23
	Conway	61.01
	Craighead	58.77
	Crawford	78.10
	Crittenden	51.68
	Cross	48.07
	Dallas	40.85
	Desha	45.88
	Drew	47.20
	Faulkner	73.17
	Franklin	58.29
	Fulton	42.78
	Garland	88.06
	Grant	69.04
	Greene	60.02
	Hempstead	50.50
	Hot Spring	64.49
	Howard	62.98
	Independence	51.89
	Izard	43.76
	Jackson	48.62
	Jefferson	50.83
	Johnson	61.37
	Lafayette	46.22
	Lawrence	51.94
	Lee	48.28
	Lincoln	52.28
	Little River	42.80
	Logan	61.65
	Lonoke	51.80
	Madison	71.71
	Marion	47.40
	Miller	44.97
	Mississippi	53.94
	Monroe	48.24
	Montgomery	69.06
	Nevada	49.78
	Newton	56.51
	Ouachita	55.26
	Perry	59.13
	Phillips	43.48
	Pike	55.33
	Poinsett	53.89
	Polk	70.46
	Pope	69.61
	Prairie	44.61
	Pulaski	59.11
	Randolph	46.84
	St. Francis	48.77
	Saline	74.90
	Scott	59.92
	Searcy	43.07
	Sebastian	73.20
	Sevier	58.24
	Sharp	44.73
	Stone	48.81
	Union	82.19
	Van Buren	59.01
	Washington	99.34
	White	59.73
	Woodruff	48.45
	Yell	59.90
California	Alameda	29.40
	Alpine	51.94
	Amador	36.12
	Butte	56.96
	Calaveras	27.79
	Colusa	30.17
	Contra Costa	50.08
	Del Norte	51.56
	El Dorado	77.04
	Fresno	60.10
	Glenn	36.57
	Humboldt	18.64
	Imperial	40.11
	Inyo	7.21
	Kern	35.07
	Kings	41.44
	Lake	69.62
	Lassen	10.49
	Los Angeles	106.35
	Madera	51.43
	Marin	38.33
	Mariposa	12.50
	Mendocino	40.28
	Merced	54.67
	Modoc	11.06
	Mono	23.41
	Monterey	35.22
	Napa	205.64
	Nevada	55.58
	Orange	91.70
	Placer	77.25
	Plumas	13.88
	Riverside	119.53
	Sacramento	50.96
	San Benito	21.13
	San Bernardino	24.01
	San Diego	145.93
	San Francisco	3,466.08
	San Joaquin	77.09
	San Luis Obispo	34.47
	San Mateo	70.82
	Santa Barbara	53.69
	Santa Clara	43.36
	Santa Cruz	170.01
	Shasta	23.94
	Sierra	19.78
	Siskiyou	18.96
	Solano	37.41
	Sonoma	120.46
	Stanislaus	71.85
	Sutter	49.73
	Tehama	24.14
	Trinity	9.43
	Tulare	62.67
	Tuolumne	25.76
	Ventura	172.73
	Yolo	41.40
	Yuba	44.97
Colorado	Adams	22.01
	Alamosa	29.32
	Arapahoe	28.38
	Archuleta	30.75
	Baca	12.05
	Bent	9.59
	Boulder	59.05
	Broomfield	30.67
	Chaffee	39.13
	Cheyenne	11.96
	Clear Creek	23.25
	Conejos	23.14
	Costilla	15.09
	Crowley	9.35
	Custer	30.38
	Delta	53.59
	Denver*	19.36
	Dolores	19.55
	Douglas	59.55
	Eagle	21.16
	Elbert	18.79
	El Paso	24.73
	Fremont	28.80
	Garfield	33.52
	Gilpin	23.69
	Grand	28.01
	Gunnison	33.13
	Hinsdale	50.94
	Huerfano	12.36
	Jackson	18.07
	Jefferson	63.03
	Kiowa	10.05
	Kit Carson	14.40
	Lake	31.60
	La Plata	25.64
	Larimer	46.16
	Las Animas	8.50
	Lincoln	10.66
	Logan	16.10
	Mesa	61.73
	Mineral	32.63
	Moffat	13.36
	Montezuma	17.05
	Montrose	44.15
	Morgan	20.23
	Otero	11.09
	Ouray	26.71
	Park	15.79
	Phillips	20.68
	Pitkin	47.02
	Prowers	12.77
	Pueblo	12.40
	Rio Blanco	17.77
	Rio Grande	41.06
	Routt	25.27
	Saguache	24.17
	San Juan	19.36
	San Miguel	26.62
	Sedgwick	17.77
	Summit	28.60
	Teller	23.58
	Washington	13.48
	Weld	28.69
	Yuma	19.34
Connecticut	Fairfield	375.51
	Hartford	379.29
	Litchfield	326.92
	Middlesex	446.24
	New Haven	344.58
	New London	308.88
	Tolland	311.88
	Windham	237.63
Delaware	Kent	267.08
	New Castle	319.98
	Sussex	275.37
Florida	Alachua	133.82
	Baker	117.55
	Bay	141.07
	Bradford	126.86
	Brevard	72.42
	Broward	488.89
	Calhoun	80.55
	Charlotte	59.63
	Citrus	141.01
	Clay	97.08
	Collier	109.92
	Columbia	129.96
	DeSoto	102.25
	Dixie	68.04
	Duval	163.04
	Escambia	87.29
	Flagler	73.21
	Franklin	47.21
	Gadsden	101.68

State	County	Fee/acre/Yr
	Gilchrist	123.70
	Glades	96.63
	Gulf	87.43
	Hamilton	89.03
	Hardee	112.20
	Hendry	62.48
	Hernando	180.11
	Highlands	75.64
	Hillsborough	187.49
	Holmes	78.16
	Indian River	96.50
	Jackson	68.35
	Jefferson	82.94
	Lafayette	69.81
	Lake	194.04
	Lee	199.04
	Leon	70.34
	Levy	95.84
	Liberty	34.20
	Madison	83.86
	Manatee	114.19
	Marion	175.13
	Martin	111.57
	Dade	508.71
	Monroe	485.56
	Nassau	116.74
	Okaloosa	99.54
	Okeechobee	84.69
	Orange	120.96
	Osceola	47.07
	Palm Beach	75.70
	Pasco	141.53
	Pinellas	453.80
	Polk	131.45
	Putnam	97.90
	St. Johns	161.82
	St. Lucie	113.16
	Santa Rosa	106.39
	Sarasota	140.55
	Seminole	156.36
	Sumter	106.40
	Suwannee	113.71
	Taylor	86.39
	Union	84.71
	Volusia	181.80
	Wakulla	58.18
	Walton	83.18
	Washington	82.12
Georgia	Appling	69.84
	Atkinson	73.43
	Bacon	70.10
	Baker	66.20
	Baldwin	62.82
	Banks	166.10
	Barrow	164.41
	Bartow	119.83
	Ben Hill	58.33
	Berrien	72.85
	Bibb	99.19
	Bleckley	68.02
	Brantley	71.00
	Brooks	75.65
	Bryan	50.41
	Bulloch	69.23
	Burke	64.40
	Butts	93.60
	Calhoun	52.47
	Camden	46.67
	Candler	71.40
	Carroll	140.24
	Catoosa	147.52
	Charlton	55.93
	Chatham	120.62
	Chattahoochee	64.11
	Chattooga	86.60
	Cherokee	238.03
	Clarke	129.07
	Clay	65.96
	Clayton	154.23
	Clinch	71.32
	Cobb	150.27
	Coffee	65.91
	Colquitt	76.89
	Columbia	103.71
	Cook	76.55
	Coweta	97.50
	Crawford	77.86
	Crisp	59.28
	Dade	83.86
	Dawson	182.31
	Decatur	70.18
	DeKalb	269.44
	Dodge	52.97
	Dooly	55.17
	Dougherty	67.65
	Douglas	191.63
	Early	63.29
	Echols	85.52
	Effingham	84.41
	Elbert	91.27
	Emanuel	57.36
	Evans	63.93
	Fannin	143.48
	Fayette	176.56
	Floyd	97.53
	Forsyth	220.24
	Franklin	170.19
	Fulton	146.44
	Gilmer	199.28
	Glascock	56.78
	Glynn	93.94
	Gordon	141.93
	Grady	78.89
	Greene	104.73
	Gwinnett	253.76
	Habersham	184.47
	Hall	196.01
	Hancock	66.44
	Haralson	108.64
	Harris	87.97
	Hart	151.08
	Heard	109.41
	Henry	158.11
	Houston	97.45
	Irwin	59.36
	Jackson	163.15
	Jasper	101.22
	Jeff Davis	58.81
	Jefferson	56.70
	Jenkins	50.55
	Johnson	51.92
	Jones	93.94
	Lamar	109.93
	Lanier	62.61
	Laurens	55.93
	Lee	66.04
	Liberty	53.63
	Lincoln	77.52
	Long	58.02
	Lowndes	97.71
	Lumpkin	172.86
	McDuffie	75.20
	McIntosh	61.84
	Macon	74.54
	Madison	133.14
	Marion	66.25
	Meriwether	96.00
	Miller	70.40
	Mitchell	69.02
	Monroe	85.62
	Montgomery	65.38
	Morgan	136.17
	Murray	106.13
	Muscogee	85.81
	Newton	113.23
	Oconee	144.38
	Oglethorpe	96.63
	Paulding	174.44
	Peach	98.66
	Pickens	174.29
	Pierce	75.36
	Pike	110.12
	Polk	111.94
	Pulaski	69.97
	Putnam	109.51
	Quitman	67.47
	Rabun	143.06
	Randolph	56.64
	Richmond	107.77
	Rockdale	145.01
	Schley	79.58
	Screven	62.19
	Seminole	60.07
	Spalding	142.48
	Stephens	134.85
	Stewart	64.85
	Sumter	61.79
	Talbot	55.75
	Taliaferro	69.13
	Tattnall	73.54
	Taylor	56.64
	Telfair	59.65
	Terrell	62.74
	Thomas	71.93
	Tift	68.15
	Toombs	56.51
	Towns	166.79
	Treutlen	58.60
	Troup	100.93
	Turner	65.43
	Twiggs	67.54
	Union	156.81
	Upson	83.75
	Walker	113.52
	Walton	154.04
	Ware	80.64
	Warren	66.01
	Washington	58.52
	Wayne	76.44
	Webster	59.81
	Wheeler	56.49
	White	190.04
	Whitfield	123.53
	Wilcox	58.99
	Wilkes	69.31
	Wilkinson	58.86
	Worth	63.95
Hawaii	Hawaii	143.51
	Honolulu	365.38
	Kauai	128.26
	Maui	169.38
Idaho	Ada	51.25
	Adams	16.43
	Bannock	18.34
	Bear Lake	15.91
	Benewah	19.82
	Bingham	21.21
	Blaine	19.66
	Boise	18.28
	Bonner	51.82
	Bonneville	24.73
	Boundary	46.54
	Butte	18.27
	Camas	14.95
	Canyon	74.72
	Caribou	13.16
	Cassia	20.31
	Clark	10.70
	Clearwater	25.28
	Custer	28.79
	Elmore	16.82
	Franklin	25.34
	Fremont	22.98
	Gem	27.56
	Gooding	48.57
	Idaho	17.20
	Jefferson	25.35
	Jerome	41.97
	Kootenai	49.51
	Latah	25.35
	Lemhi	19.36
	Lewis	18.42
	Lincoln	26.19
	Madison	33.35
	Minidoka	29.56
	Nez Perce	17.90
	Oneida	14.32
	Owyhee	16.70
	Payette	34.27

State	County	Fee/acre/Yr
	Power	12.73
	Shoshone	71.26
	Teton	44.61
	Twin Falls	30.25
	Valley	40.20
	Washington	11.94
Illinois	Adams	97.42
	Alexander	85.92
	Bond	94.61
	Boone	137.28
	Brown	84.73
	Bureau	112.42
	Calhoun	86.34
	Carroll	102.12
	Cass	98.86
	Champaign	120.87
	Christian	116.09
	Clark	89.84
	Clay	81.59
	Clinton	105.78
	Coles	107.62
	Cook	289.51
	Crawford	91.06
	Cumberland	97.86
	DeKalb	128.70
	De Witt	115.84
	Douglas	116.84
	DuPage	208.59
	Edgar	106.20
	Edwards	77.42
	Effingham	100.28
	Fayette	81.84
	Ford	110.42
	Franklin	70.42
	Fulton	97.86
	Gallatin	82.56
	Greene	100.78
	Grundy	115.37
	Hamilton	83.36
	Hancock	92.34
	Hardin	63.67
	Henderson	95.81
	Henry	109.73
	Iroquois	112.00
	Jackson	77.73
	Jasper	91.92
	Jefferson	78.73
	Jersey	101.67
	Jo Daviess	111.20
	Johnson	65.11
	Kane	135.01
	Kankakee	120.28
	Kendall	120.23
	Knox	111.67
	Lake	175.73
	La Salle	116.70
	Lawrence	91.06
	Lee	119.81
	Livingston	115.03
	Logan	116.75
	McDonough	107.87
	McHenry	139.98
	McLean	116.14
	Macon	123.92
	Macoupin	106.50
	Madison	114.95
	Marion	86.70
	Marshall	112.34
	Mason	91.67
	Massac	70.34
	Menard	106.48
	Mercer	102.42
	Monroe	98.78
	Montgomery	105.92
	Morgan	109.28
	Moultrie	117.45
	Ogle	125.98
	Peoria	107.92
	Perry	77.89
	Piatt	121.34
	Pike	97.67
	Pope	63.14
	Pulaski	82.14
	Putnam	109.37
	Randolph	89.34
	Richland	85.39
	Rock Island	113.78
	St. Clair	105.53
	Saline	80.28
	Sangamon	108.09
	Schuyler	90.56
	Scott	100.12
	Shelby	98.61
	Stark	114.50
	Stephenson	107.42
	Tazewell	112.12
	Union	73.61
	Vermilion	109.73
	Wabash	90.03
	Warren	113.62
	Washington	93.73
	Wayne	74.92
	White	78.89
	Whiteside	106.12
	Will	156.65
	Williamson	78.73
	Winnebago	122.53
	Woodford	117.73
Indiana	Adams	120.40
	Allen	111.66
	Bartholomew	105.39
	Benton	93.90
	Blackford	76.09
	Boone	108.44
	Brown	119.32
	Carroll	114.38
	Cass	99.17
	Clark	99.31
	Clay	87.55
	Clinton	114.77
	Crawford	80.58
	Daviess	100.95
	Dearborn	106.64
	Decatur	98.87
	DeKalb	100.62
	Delaware	97.62
	Dubois	89.71
	Elkhart	153.95
	Fayette	90.77
	Floyd	128.53
	Fountain	95.73
	Franklin	102.00
	Fulton	93.04
	Gibson	87.41
	Grant	94.82
	Greene	80.67
	Hamilton	126.12
	Hancock	113.77
	Harrison	90.18
	Hendricks	114 16
	Henry	95.76
	Howard	115.10
	Huntington	96.09
	Jackson	83.39
	Jasper	92.79
	Jay	110.30
	Jefferson	94.49
	Jennings	88.49
	Johnson	123.57
	Knox	95.93
	Kosciusko	103.50
	LaGrange	141.33
	Lake	109.91
	LaPorte	101.42
	Lawrence	77.78
	Madison	103.67
	Marion	162.97
	Marshall	98.68
	Martin	89.66
	Miami	93.01
	Monroe	101.03
	Montgomery	104.20
	Morgan	108.41
	Newton	100.15
	Noble	102.56
	Ohio	99.09
	Orange	80.67
	Owen	89.10
	Parke	85.94
	Perry	73.98
	Pike	77.34
	Porter	115.46
	Posey	84.55
	Pulaski	86.10
	Putnam	99.81
	Randolph	87.44
	Ripley	96.54
	Rush	102.09
	St. Joseph	101.28
	Scott	85.69
	Shelby	105.28
	Spencer	84.63
	Starke	84.22
	Steuben	108.72
	Sullivan	83.16
	Switzerland	97.70
	Tippecanoe	109.44
	Tipton	114.33
	Union	104.22
	Vanderburgh	95.21
	Vermillion	88.21
	Vigo	85.27
	Wabash	99.29
	Warren	98.01
	Warrick	84.72
	Washington	78.36
	Wayne	90.82
	Wells	96.12
	White	106.42
	Whitley	106.00
Iowa	Adair	75.43
	Adams	71.06
	Allamakee	77.52
	Appanoose	60.10
	Audubon	96.56
	Benton	100.46
	Black Hawk	108.53
	Boone	104.58
	Bremer	110.17
	Buchanan	104.94
	Buena Vista	106.58
	Butler	97.73
	Calhoun	106.08
	Carroll	102.46
	Cass	85.46
	Cedar	102.38
	Cerro Gordo	99.87
	Cherokee	105.66
	Chickasaw	100.85
	Clarke	64.38
	Clay	100.49
	Clayton	86.51
	Clinton	94.81
	Crawford	86.71
	Dallas	93.06
	Davis	65.33
	Decatur	57.34
	Delaware	105.80
	Des Moines	91.50
	Dickinson	98.48
	Dubuque	94.50
	Emmet	100.04
	Fayette	93.92
	Floyd	103.77
	Franklin	101.38
	Fremont	85.21
	Greene	106.03
	Grundy	109.26
	Guthrie	83.37
	Hamilton	109.84
	Hancock	99.51
	Hardin	105.36
	Harrison	82.56
	Henry	85.04
	Howard	84.93
	Humboldt	104.41
	Ida	89.49
	Iowa	85.76
	Jackson	79.03

State	County	Fee/acre/Yr
	Jasper	96.12
	Jefferson	79.22
	Johnson	104.41
	Jones	97.31
	Keokuk	82.78
	Kossuth	100.29
	Lee	75.43
	Linn	104.72
	Louisa	88.82
	Lucas	60.51
	Lyon	116.97
	Madison	82.25
	Mahaska	85.40
	Marion	81.14
	Marshall	103.66
	Mills	92.78
	Mitchell	99.71
	Monona	88.30
	Monroe	62.91
	Montgomery	81.25
	Muscatine	98.76
	O'Brien	117.05
	Osceola	107.97
	Page	75.55
	Palo Alto	100.71
	Plymouth	100.99
	Pocahontas	102.52
	Polk	107.06
	Pottawattamie	101.04
	Poweshiek	92.44
	Ringgold	63.27
	Sac	107.36
	Scott	117.08
	Shelby	89.44
	Sioux	126.21
	Story	99.07
	Tama	96.45
	Taylor	69.23
	Union	70.09
	Van Buren	68.98
	Wapello	85.90
	Warren	87.13
	Washington	102.66
	Wayne	62.32
	Webster	100.63
	Winnebago	93.28
	Winneshiek	90.47
	Woodbury	82.98
	Worth	98.57
	Wright	108.84
Kansas	Allen	27.67
	Anderson	28.06
	Atchison	37.50
	Barber	17.82
	Barton	23.17
	Bourbon	30.78
	Brown	46.81
	Butler	29.95
	Chase	26.60
	Chautauqua	24.22
	Cherokee	34.10
	Cheyenne	16.91
	Clark	17.35
	Clay	32.04
	Cloud	27.87
	Coffey	26.82
	Comanche	14.61
	Cowley	26.27
	Crawford	29.62
	Decatur	18.04
	Dickinson	29.13
	Doniphan	47.03
	Douglas	52.82
	Edwards	24.08
	Elk	26.96
	Ellis	21.25
	Ellsworth	20.73
	Finney	21.50
	Ford	19.55
	Franklin	45.38
	Geary	34.46
	Gove	16.53
	Graham	16.97
	Grant	21.96
	Gray	23.39
	Greeley	19.41
	Greenwood	26.30
	Hamilton	18.42
	Harper	20.26
	Harvey	37.48
	Haskell	29.16
	Hodgeman	16.31
	Jackson	32.42
	Jefferson	44.12
	Jewell	22.71
	Johnson	55.02
	Kearny	18.92
	Kingman	23.04
	Kiowa	17.30
	Labette	28.17
	Lane	16.42
	Leavenworth	53.57
	Lincoln	21.58
	Linn	36.85
	Logan	16.75
	Lyon	26.82
	McPherson	30.91
	Marion	27.43
	Marshall	34.59
	Meade	19.44
	Miami	56.39
	Mitchell	25.31
	Montgomery	31.35
	Morris	24.11
	Morton	15.81
	Nemaha	38.68
	Neosho	29.13
	Ness	14.83
	Norton	18.83
	Osage	33.06
	Osborne	20.84
	Ottawa	22.71
	Pawnee	23.50
	Phillips	19.16
	Pottawatomie	32.75
	Pratt	24.57
	Rawlins	17.52
	Reno	27.81
	Republic	30.45
	Rice	24.60
	Riley	34.18
	Rooks	18.04
	Rush	19.22
	Russell	18.09
	Saline	29.51
	Scott	20.43
	Sedgwick	39.65
	Seward	19.96
	Shawnee	43.87
	Sheridan	21.28
	Sherman	20.76
	Smith	21.50
	Stafford	23.80
	Stanton	21.00
	Stevens	21.69
	Sumner	25.75
	Thomas	22.43
	Trego	16.97
	Wabaunsee	26.77
	Wallace	17.10
	Washington	28.39
	Wichita	18.37
	Wilson	26.38
	Woodson	25.51
	Wyandotte	66.74
Kentucky	Adair	68.34
	Allen	77.19
	Anderson	75.11
	Ballard	71.21
	Barren	76.97
	Bath	55.87
	Bell	53.57
	Boone	136.23
	Bourbon	130.07
	Boyd	71.96
	Boyle	89.47
	Bracken	56.78
	Breathitt	41.93
	Breckinridge	58.52
	Bullitt	104.71
	Butler	53.51
	Caldwell	54.76
	Calloway	78.02
	Campbell	108.00
	Carlisle	65.68
	Carroll	65.54
	Carter	49.17
	Casey	56.06
	Christian	71.35
	Clark	92.62
	Clay	51.83
	Clinton	63.53
	Crittenden	52.27
	Cumberland	50.06
	Daviess	83.63
	Edmonson	59.99
	Elliott	43.12
	Estill	55.28
	Fayette	182.36
	Fleming	54.54
	Floyd	64.24
	Franklin	89.83
	Fulton	62.53
	Gallatin	82.44
	Garrard	72.51
	Grant	77.96
	Graves	77.58
	Grayson	59.46
	Green	64.16
	Greenup	54.76
	Hancock	59.49
	Hardin	79.51
	Harlan	46.32
	Harrison	74.20
	Hart	66.65
	Henderson	77.11
	Henry	90.38
	Hickman	72.51
	Hopkins	60.48
	Jackson	50.56
	Jefferson	201.94
	Jessamine	129.90
	Johnson	59.02
	Kenton	123.12
	Knott	55.15
	Knox	60.65
	Larue	75.78
	Laurel	78.93
	Lawrence	40.60
	Lee	35.90
	Leslie	22.04
	Letcher	46.41
	Lewis	42.26
	Lincoln	65.77
	Livingston	54.32
	Logan	73.59
	Lyon	47.57
	McCracken	80.92
	McCreary	66.07
	McLean	83.30
	Madison	81.61
	Magoffin	46.49
	Marion	67.67
	Marshall	70.55
	Martin	23.04
	Mason	69.91
	Meade	81.45
	Menifee	52.02
	Mercer	94.61
	Metcalfe	64.52
	Monroe	64.27
	Montgomery	69.80
	Morgan	44.86
	Muhlenberg	54.68
	Nelson	89.99
	Nicholas	54.65
	Ohio	55.37
	Oldham	169.01
	Owen	63.03

State	County	Fee/acre/Yr
	Owsley	41.24
	Pendleton	69.91
	Perry	33.69
	Pike	25.89
	Powell	53.27
	Pulaski	72.60
	Robertson	49.31
	Rockcastle	57.08
	Rowan	54.73
	Russell	85.73
	Scott	106.48
	Shelby	122.57
	Simpson	81.72
	Spencer	91.13
	Taylor	68.50
	Todd	79.04
	Trigg	71.44
	Trimble	70.47
	Union	71.44
	Warren	86.73
	Washington	68.17
	Wayne	56.53
	Webster	64.33
	Whitley	68.01
	Wolfe	48.84
	Woodford	192.71
Louisiana	Acadia	48.47
	Allen	49.86
	Ascension	91.09
	Assumption	67.35
	Avoyelles	46.63
	Beauregard	58.63
	Bienville	56.32
	Bossier	72.94
	Caddo	56.11
	Calcasieu	46.76
	Caldwell	49.57
	Cameron	46.82
	Catahoula	42.96
	Claiborne	68.43
	Concordia	45.74
	De Soto	52.51
	East Baton Rouge.	105.89
	East Carroll	41.85
	East Feliciana	68.11
	Evangeline	46.45
	Franklin	45.58
	Grant	48.63
	Iberia	65.59
	Iberville	75.12
	Jackson	82.47
	Jefferson	54.35
	Jefferson Davis	46.42
	Lafayette	89.67
	Lafourche	63.88
	La Salle	60.86
	Lincoln	83.68
	Livingston	113.75
	Madison	42.20
	Morehouse	42.64
	Natchitoches	43.40
	Orleans	54.04
	Ouachita	58.76
	Plaquemines	33.11
	Pointe Coupee	51.78
	Rapides	65.83
	Red River	44.01
	Richland	42.09
	Sabine	77.85
	St. Bernard	30.88
	St. Charles	54.04
	St. Helena	79.93
	St. James	68.22
	St. John the Baptist.	75.65
	St. Landry	51.62
	St. Martin	63.23
	St. Mary	58.79
	St. Tammany	141.76
	Tangipahoa	102.27
	Tensas	42.35
	Terrebonne	31.22
	Union	77.33
	Vermilion	52.51
	Vernon	81.82
	Washington	86.52
	Webster	67.32
	West Baton Rouge.	78.67
	West Carroll	48.26
	West Feliciana	63.28
	Winn	56.77
Maine	Androscoggin	79.06
	Aroostook	30.53
	Cumberland	131.46
	Franklin	69.49
	Hancock	74.99
	Kennebec	71.93
	Knox	102.22
	Lincoln	101.66
	Oxford	73.04
	Penobscot	60.40
	Piscataquis	52.92
	Sagadahoc	98.25
	Somerset	49.77
	Waldo	59.90
	Washington	29.90
	York	124.40
Maryland	Allegany	119.76
	Anne Arundel	359.24
	Baltimore	250.55
	Calvert	232.70
	Caroline	149.91
	Carroll	214.42
	Cecil	209.22
	Charles	184.68
	Dorchester	133.20
	Frederick	227.01
	Garrett	157.55
	Harford	264.48
	Howard	359.45
	Kent	166.10
	Montgomery	261.18
	Prince George's	257.38
	Queen Anne's	157.42
	St. Mary's	198.04
	Somerset	172.52
	Talbot	167.84
	Washington	206.42
	Wicomico	157.61
	Worcester	119.90
Massachusetts	Barnstable	869.31
	Berkshire	214.37
	Bristol	390.35
	Dukes	369.19
	Essex	453.25
	Franklin	189.88
	Hampden	259.78
	Hampshire	219.70
	Middlesex	458.61
	Nantucket	248.35
	Norfolk	507.42
	Plymouth	358.03
	Suffolk	651.62
	Worcester	288.50
Michigan	Alcona	65.59
	Alger	58.00
	Allegan	112.83
	Alpena	69.63
	Antrim	104.11
	Arenac	64.61
	Baraga	55.23
	Barry	94.18
	Bay	76.03
	Benzie	123.62
	Berrien	124.54
	Branch	80.88
	Calhoun	81.26
	Cass	94.53
	Charlevoix	102.20
	Cheboygan	73.01
	Chippewa	51.93
	Clare	77.40
	Clinton	97.56
	Crawford	109.40
	Delta	61.65
	Dickinson	66.61
	Eaton	82.18
	Emmet	96.58
	Genesee	100.71
	Gladwin	79.88
	Gogebic	92.08
	Grand Traverse	150.49
	Gratiot	79.83
	Hillsdale	81.29
	Houghton	53.55
	Huron	84.15
	Ingham	103.09
	Ionia	92.70
	Iosco	72.71
	Iron	73.54
	Isabella	80.37
	Jackson	93.59
	Kalamazoo	112.85
	Kalkaska	92.70
	Kent	130.55
	Keweenaw	56.49
	Lake	78.56
	Lapeer	111.07
	Leelanau	190.74
	Lenawee	86.28
	Livingston	136.08
	Luce	79.48
	Mackinac	57.06
	Macomb	139.05
	Manistee	83.10
	Marquette	65.15
	Mason	86.12
	Mecosta	78.40
	Menominee	60.14
	Midland	80.94
	Missaukee	78.78
	Monroe	103.22
	Montcalm	77.29
	Montmorency	64.21
	Muskegon	106.89
	Newaygo	92.13
	Oakland	227.22
	Oceana	102.03
	Ogemaw	76.08
	Ontonagon	42.90
	Osceola	71.98
	Oscoda	69.07
	Otsego	71.71
	Ottawa	156.94
	Presque Isle	60.86
	Roscommon	112.48
	Saginaw	76.49
	St. Clair	103.44
	St. Joseph	91.24
	Sanilac	78.67
	Schoolcraft	37.88
	Shiawassee	79.45
	Tuscola	81.72
	Van Buren	115.50
	Washtenaw	134.98
	Wayne	208.84
	Wexford	86.01
Minnesota	Aitkin	46.47
	Anoka	161.10
	Becker	52.04
	Beltrami	43.04
	Benton	84.39
	Big Stone	59.63
	Blue Earth	98.37
	Brown	81.89
	Carlton	57.77
	Carver	109.17
	Cass	58.85
	Chippewa	74.17
	Chisago	119.37
	Clay	51.21
	Clearwater	41.18
	Cook	119.01
	Cottonwood	82.17
	Crow Wing	71.84
	Dakota	107.79
	Dodge	102.22

State	County	Fee/acre/Yr
	Douglas	66.74
	Faribault	87.99
	Fillmore	79.82
	Freeborn	86.05
	Goodhue	98.90
	Grant	61.87
	Hennepin	151.99
	Houston	74.19
	Hubbard	64.17
	Isanti	110.75
	Itasca	55.00
	Jackson	84.30
	Kanabec	67.96
	Kandiyohi	78.74
	Kittson	32.79
	Koochiching	37.44
	Lac qui Parle	63.59
	Lake	92.06
	Lake of the Woods.	33.12
	Le Sueur	97.04
	Lincoln	62.51
	Lyon	76.08
	McLeod	94.14
	Mahnomen	38.55
	Marshall	35.78
	Martin	85.27
	Meeker	83.28
	Mille Lacs	77.05
	Morrison	64.36
	Mower	88.10
	Murray	73.47
	Nicollet	93.36
	Nobles	87.02
	Norman	43.40
	Olmsted	99.54
	Otter Tail	55.69
	Pennington	38.05
	Pine	59.77
	Pipestone	75.19
	Polk	41.60
	Pope	60.71
	Ramsey	231.92
	Red Lake	37.36
	Redwood	83.83
	Renville	80.68
	Rice	116.85
	Rock	90.06
	Roseau	30.58
	St. Louis	54.31
	Scott	138.95
	Sherburne	106.57
	Sibley	91.95
	Stearns	78.38
	Steele	93.33
	Stevens	68.93
	Swift	69.13
	Todd	60.60
	Traverse	60.49
	Wabasha	81.04
	Wadena	53.17
	Waseca	96.24
	Washington	158.58
	Watonwan	82.84
	Wilkin	54.28
	Winona	82.59
	Wright	111.22
	Yellow Medicine	70.12
Mississippi	Adams	45.57
	Alcorn	45.35
	Amite	64.47
	Attala	42.63
	Benton	38.96
	Bolivar	54.27
	Calhoun	37.87
	Carroll	40.86
	Chickasaw	39.69
	Choctaw	48.10
	Claiborne	43.61
	Clarke	50.63
	Clay	39.83
	Coahoma	49.05
	Copiah	52.45
	Covington	67.41
	DeSoto	63.82
	Forrest	82.24
	Franklin	50.68
	George	79.63
	Greene	64.34
	Grenada	43.63
	Hancock	81.28
	Harrison	130.55
	Hinds	50.65
	Holmes	45.59
	Humphreys	45.97
	Issaquena	46.98
	Itawamba	40.91
	Jackson	98.23
	Jasper	55.66
	Jefferson	48.94
	Jefferson Davis	55.74
	Jones	84.71
	Kemper	37.57
	Lafayette	54.33
	Lamar	74.02
	Lauderdale	46.65
	Lawrence	60.36
	Leake	61.05
	Lee	48.45
	Leflore	46.55
	Lincoln	62.30
	Lowndes	48.56
	Madison	53.26
	Marion	66.84
	Marshall	49.18
	Monroe	40.34
	Montgomery	41.40
	Neshoba	66.05
	Newton	55.44
	Noxubee	41.73
	Oktibbeha	48.64
	Panola	41.84
	Pearl River	73.64
	Perry	66.49
	Pike	73.83
	Pontotoc	45.10
	Prentiss	38.11
	Quitman	42.11
	Rankin	68.12
	Scott	56.42
	Sharkey	42.49
	Simpson	65.78
	Smith	67.63
	Stone	74.48
	Sunflower	47.36
	Tallahatchie	41.59
	Tate	55.11
	Tippah	39.58
	Tishomingo	42.00
	Tunica	49.21
	Union	41.43
	Walthall	66.81
	Warren	48.12
	Washington	48.64
	Wayne	67.85
	Webster	40.70
	Wilkinson	49.21
	Winston	46.38
	Yalobusha	41.89
	Yazoo	46.00
Missouri	Adair	51.34
	Andrew	66.75
	Atchison	67.61
	Audrain	71.94
	Barry	71.19
	Barton	51.23
	Bates	53.90
	Benton	52.41
	Bollinger	51.64
	Boone	77.34
	Buchanan	74.50
	Butler	62.48
	Caldwell	55.12
	Callaway	70.25
	Camden	51.23
	Cape Girardeau	70.03
	Carroll	58.29
	Carter	44.94
	Cass	78.28
	Cedar	50.26
	Chariton	54.29
	Christian	76.79
	Clark	54.34
	Clay	78.58
	Clinton	64.24
	Cole	66.45
	Cooper	61.38
	Crawford	51.26
	Dade	50.15
	Dallas	61.29
	Daviess	53.41
	DeKalb	53.99
	Dent	46.40
	Douglas	50.87
	Dunklin	68.16
	Franklin	82.50
	Gasconade	60.80
	Gentry	51.53
	Greene	90.35
	Grundy	51.31
	Harrison	50.65
	Henry	49.71
	Hickory	43.07
	Holt	67.61
	Howard	58.15
	Howell	47.81
	Iron	47.09
	Jackson	90.05
	Jasper	60.93
	Jefferson	84.92
	Johnson	61.40
	Knox	52.30
	Laclede	53.16
	Lafayette	74.58
	Lawrence	68.02
	Lewis	58.76
	Lincoln	86.44
	Linn	50.35
	Livingston	55.83
	McDonald	65.35
	Macon	49.41
	Madison	47.15
	Maries	46.98
	Marion	61.51
	Mercer	49.93
	Miller	55.03
	Mississippi	65.21
	Moniteau	65.48
	Monroe	62.42
	Montgomery	78.58
	Morgan	61.10
	New Madrid	66.86
	Newton	72.32
	Nodaway	57.96
	Oregon	47.04
	Osage	53.43
	Ozark	47.01
	Pemiscot	59.58
	Perry	59.97
	Pettis	65.21
	Phelps	56.94
	Pike	65.29
	Platte	78.39
	Polk	59.69
	Pulaski	51.34
	Putnam	47.56
	Ralls	65.43
	Randolph	56.05
	Ray	60.66
	Reynolds	39.26
	Ripley	47.67
	St. Charles	90.19
	St. Clair	49.27
	Ste. Genevieve	59.78
	St. Francois	72.68
	St Louis	101.63
	Saline	60.91
	Schuyler	46.87
	Scotland	54.18

State	County	Fee/acre/Yr
	Scott	71.27
	Shannon	48.42
	Shelby	57.16
	Stoddard	65.32
	Stone	67.97
	Sullivan	43.18
	Taney	52.44
	Texas	47.89
	Vernon	50.79
	Warren	91.65
	Washington	51.39
	Wayne	47.04
	Webster	72.05
	Worth	45.08
	Wright	49.93
Montana	Beaverhead	26.20
	Big Horn	8.87
	Blaine	13.33
	Broadwater	23.96
	Carbon	31.13
	Carter	8.57
	Cascade	19.80
	Chouteau	14.61
	Custer	11.37
	Daniels	12.85
	Dawson	11.11
	Deer Lodge	31.98
	Fallon	12.63
	Fergus	20.13
	Flathead	84.35
	Gallatin	49.15
	Garfield	9.37
	Glacier	12.37
	Golden Valley	16.37
	Granite	29.96
	Hill	14.46
	Jefferson	26.59
	Judith Basin	18.28
	Lake	33.81
	Lewis and Clark	21.30
	Liberty	10.09
	Lincoln	80.76
	McCone	10.35
	Madison	34.33
	Meagher	25.41
	Mineral	79.81
	Missoula	48.28
	Musselshell	13.22
	Park	39.48
	Petroleum	10.59
	Phillips	10.87
	Pondera	15.48
	Powder River	14.07
	Powell	19.65
	Prairie	13.48
	Ravalli	84.24
	Richland	15.24
	Roosevelt	15.44
	Rosebud	8.37
	Sanders	32.91
	Sheridan	14.44
	Silver Bow	47.15
	Stillwater	22.24
	Sweet Grass	26.39
	Teton	18.44
	Toole	12.91
	Treasure	10.80
	Valley	12.80
	Wheatland	12.13
	Wibaux	9.17
	Yellowstone	16.87
Nebraska	Adams	55.71
	Antelope	41.30
	Arthur	8.34
	Banner	13.71
	Blaine	11.31
	Boone	46.27
	Box Butte	20.57
	Boyd	19.50
	Brown	12.48
	Buffalo	41.95
	Burt	62.27
	Butler	61.37
	Cass	64.10
	Cedar	49.59
	Chase	25.04
	Cherry	10.14
	Cheyenne	18.50
	Clay	57.18
	Colfax	61.25
	Cuming	62.25
	Custer	25.47
	Dakota	44.07
	Dawes	14.06
	Dawson	33.38
	Deuel	17.70
	Dixon	46.02
	Dodge	66.27
	Douglas	90.94
	Dundy	20.50
	Fillmore	60.18
	Franklin	32.28
	Frontier	19.55
	Furnas	24.42
	Gage	44.84
	Garden	11.64
	Garfield	13.91
	Gosper	30.64
	Grant	7.57
	Greeley	29.69
	Hall	51.06
	Hamilton	65.04
	Harlan	28.61
	Hayes	16.93
	Hitchcock	19.18
	Holt	22.37
	Hooker	8.56
	Howard	38.93
	Jefferson	44.74
	Johnson	38.33
	Kearney	50.11
	Keith	21.40
	Keya Paha	13.86
	Kimball	17.48
	Knox	36.35
	Lancaster	63.30
	Lincoln	20.82
	Logan	12.76
	Loup	11.21
	McPherson	9.11
	Madison	54 11
	Merrick	45.72
	Morrill	16.13
	Nance	36.35
	Nemaha	48.84
	Nuckolls	41.15
	Otoe	54.48
	Pawnee	32.71
	Perkins	24.39
	Phelps	51.26
	Pierce	49.79
	Platte	56.80
	Polk	61.60
	Red Willow	26.32
	Richardson	47.39
	Rock	12.73
	Saline	52.38
	Sarpy	83.77
	Saunders	66.72
	Scotts Bluff	27.19
	Seward	63.22
	Sheridan	12.04
	Sherman	27.32
	Sioux	11.91
	Stanton	46.27
	Thayer	45.47
	Thomas	8.51
	Thurston	49.16
	Valley	28.02
	Washington	76.63
	Wayne	59.73
	Webster	31.51
	Wheeler	17.50
	York	65.82
Nevada	Churchill	17.79
	Clark	27.06
	Douglas	21.60
	Elko	2.74
	Esmeralda	12.00
	Eureka	1.27
	Humboldt	5.14
	Lander	3.63
	Lincoln	13.17
	Lyon	11.28
	Mineral	8.74
	Nye	11.44
	Pershing	6.34
	Storey	125.74
	Washoe	7.06
	White Pine	7.39
	Carson City	27.71
New Hampshire	Belknap	152.45
	Carroll	124.87
	Cheshire	122.71
	Coos	63.72
	Grafton	104.28
	Hillsborough	182.55
	Merrimack	126.65
	Rockingham	254.65
	Strafford	164.76
	Sullivan	105.74
New Jersey	Atlantic	359.87
	Bergen	1,679.35
	Burlington	290.79
	Camden	375.54
	Cape May	389.67
	Cumberland	226.84
	Essex	2,234.19
	Gloucester	375.20
	Hudson	372.46
	Hunterdon	489.64
	Mercer	456.61
	Middlesex	492.43
	Monmouth	575.66
	Morris	597.21
	Ocean	439.69
	Passaic	994.26
	Salem	254.24
	Somerset	496.92
	Sussex	330.69
	Union	3,234.42
	Warren	299.75
New Mexico	Bernalillo	23.27
	Catron	4.46
	Chaves	5.35
	Cibola	3.16
	Colfax	5.82
	Curry	11.44
	De Baca	4.01
	Dona Ana	33.17
	Eddy	6.57
	Grant	4.10
	Guadalupe	3.17
	Harding	5.87
	Hidalgo	2.95
	Lea	3.90
	Lincoln	4.86
	Los Alamos	5.87
	Luna	6.10
	McKinley	2.27
	Mora	9.06
	Otero	5.61
	Quay	6.29
	Rio Arriba	8.21
	Roosevelt	8.19
	Sandoval	6.29
	San Juan	5.44
	San Miguel	5.67
	Santa Fe	11.66
	Sierra	3.78
	Socorro	4.81
	Taos	10.86
	Torrance	5.77
	Union	5.37
	Valencia	11.31
New York	Albany	84.92
	Allegany	37.77
	Bronx	60.26
	Broome	48.90

State	County	Fee/acre/Yr
	Cattaraugus	46.14
	Cayuga	56.29
	Chautauqua	52.15
	Chemung	48.47
	Chenango	47.76
	Clinton	46.38
	Columbia	113.42
	Cortland	41.24
	Delaware	60.07
	Dutchess	148.36
	Erie	78.51
	Essex	62.30
	Franklin	38.49
	Fulton	57.56
	Genesee	46.38
	Greene	77.34
	Hamilton	60.26
	Herkimer	46.17
	Jefferson	36.71
	Kings	60.26
	Lewis	42.51
	Livingston	53.35
	Madison	44.58
	Monroe	68.44
	Montgomery	57.21
	Nassau	2,622.21
	New York	60.26
	Niagara	56.52
	Oneida	51.25
	Onondaga	63.46
	Ontario	58.38
	Orange	136.41
	Orleans	45.48
	Oswego	49.88
	Otsego	50.30
	Putnam	369.87
	Queens	60.26
	Rensselaer	83.52
	Richmond	3,199.08
	Rockland	1,496.95
	St. Lawrence	35.65
	Saratoga	115.62
	Schenectady	95.28
	Schoharie	56.68
	Schuyler	57.69
	Seneca	53.32
	Steuben	41.64
	Suffolk	479.83
	Sullivan	92.52
	Tioga	46.38
	Tompkins	59.92
	Ulster	105.55
	Warren	91.97
	Washington	56.42
	Wayne	60.52
	Westchester	842.63
	Wyoming	47.10
	Yates	75.36
North Carolina	Alamance	122.34
	Alexander	145.03
	Alleghany	150.63
	Anson	94.66
	Ashe	153.02
	Avery	200.66
	Beaufort	68.10
	Bertie	67.81
	Bladen	87.47
	Brunswick	113.56
	Buncombe	188.37
	Burke	156.07
	Cabarrus	149.17
	Caldwell	134.74
	Camden	78.16
	Carteret	81.55
	Caswell	82.85
	Catawba	140.65
	Chatham	148.59
	Cherokee	179.06
	Chowan	65.31
	Clay	189.25
	Cleveland	106.34
	Columbus	87.44
	Craven	81.63
	Cumberland	79.83
	Currituck	88.24
	Dare	59.82
	Davidson	150.95
	Davie	139.04
	Duplin	108.33
	Durham	135.77
	Edgecombe	66.21
	Forsyth	178.63
	Franklin	99.12
	Gaston	147.93
	Gates	67.09
	Graham	116.64
	Granville	88.67
	Greene	90.92
	Guilford	139.20
	Halifax	63.14
	Harnett	140.73
	Haywood	166.08
	Henderson	273.64
	Hertford	54.48
	Hoke	89.86
	Hyde	62.45
	Iredell	152.89
	Jackson	191.79
	Johnston	114.49
	Jones	74.10
	Lee	122.71
	Lenoir	89.75
	Lincoln	122.64
	McDowell	157.43
	Macon	231.97
	Madison	140.04
	Martin	78.00
	Mecklenburg	411.35
	Mitchell	135.03
	Montgomery	98.54
	Moore	139.25
	Nash	90.13
	New Hanover	212.76
	Northampton	66.96
	Onslow	121.07
	Orange	148.93
	Pamlico	65.36
	Pasquotank	68.76
	Pender	106.87
	Perquimans	76.51
	Person	90.34
	Pitt	90.07
	Polk	197.85
	Randolph	128.55
	Richmond	101.72
	Robeson	76.46
	Rockingham	102.92
	Rowan	137.87
	Rutherford	116.43
	Sampson	99.20
	Scotland	76.83
	Stanly	106.69
	Stokes	112.63
	Surry	124.41
	Swain	162.76
	Transylvania	194.93
	Tyrrell	60.48
	Union	138.16
	Vance	87.68
	Wake	210.85
	Warren	65.23
	Washington	59.37
	Watauga	188.40
	Wayne	110.40
	Wilkes	148.35
	Wilson	85.40
	Yadkin	137.82
	Yancey	129.19
North Dakota	Adams	16.18
	Barnes	26.13
	Benson	20.18
	Billings	13.09
	Bottineau	20.40
	Bowman	14.20
	Burke	17.40
	Burleigh	20.21
	Cass	40.77
	Cavalier	26.40
	Dickey	28.93
	Divide	17.37
	Dunn	14.20
	Eddy	16.40
	Emmons	18.87
	Foster	21.15
	Golden Valley	12.98
	Grand Forks	29.38
	Grant	14.37
	Griggs	18.96
	Hettinger	20.76
	Kidder	15.93
	LaMoure	29.21
	Logan	20.32
	McHenry	18.20
	McIntosh	20.15
	McKenzie	14.34
	McLean	21.68
	Mercer	16.70
	Morton	17.65
	Mountrail	16.34
	Nelson	19.48
	Oliver	17.87
	Pembina	37.58
	Pierce	17.93
	Ramsey	19.59
	Ransom	28.57
	Renville	24.93
	Richland	38.36
	Rolette	18.59
	Sargent	31.24
	Sheridan	16.31
	Sioux	10.28
	Slope	13.37
	Stark	19.84
	Steele	27.07
	Stutsman	22.82
	Towner	20.71
	Traill	38.19
	Walsh	30.93
	Ward	23.51
	Wells	23.21
	Williams	18.34
Ohio	Adams	78.89
	Allen	99.15
	Ashland	103.64
	Ashtabula	80.66
	Athens	71.80
	Auglaize	105.55
	Belmont	58.29
	Brown	81.10
	Butler	128.45
	Carroll	88.16
	Champaign	101.29
	Clark	105.94
	Clermont	114.85
	Clinton	99.76
	Columbiana	106.21
	Coshocton	81.85
	Crawford	88.60
	Cuyahoga	618.46
	Darke	116.16
	Defiance	82.60
	Delaware	123.96
	Erie	110.59
	Fairfield	117.15
	Fayette	92.98
	Franklin	131.44
	Fulton	99.27
	Gallia	76.09
	Geauga	166.66
	Greene	108.57
	Guernsey	72.21
	Hamilton	183.47
	Hancock	90.02
	Hardin	89.74
	Harrison	62.94
	Henry	93.53
	Highland	86.56
	Hocking	93.39
	Holmes	128.03

State	County	Fee/acre/Yr
	Huron	95.69
	Jackson	70.16
	Jefferson	65.04
	Knox	98.49
	Lake	212.57
	Lawrence	70.08
	Licking	111.70
	Logan	86.94
	Lorain	124.60
	Lucas	120.47
	Madison	107.29
	Mahoning	114.11
	Marion	85.39
	Medina	152.70
	Meigs	70.69
	Mercer	135.18
	Miami	107.93
	Monroe	57.43
	Montgomery	123.47
	Morgan	60.56
	Morrow	95.31
	Muskingum	77.56
	Noble	63.46
	Ottawa	80.05
	Paulding	88.02
	Perry	79.55
	Pickaway	95.36
	Pike	69.69
	Portage	128.62
	Preble	100.65
	Putnam	96.55
	Richland	100.12
	Ross	78.80
	Sandusky	85.50
	Scioto	73.04
	Seneca	86.50
	Shelby	113.58
	Stark	131.77
	Summit	219.93
	Trumbull	90.90
	Tuscarawas	96.66
	Union	92.59
	Van Wert	99.18
	Vinton	75.26
	Warren	147.69
	Washington	71.05
	Wayne	138.67
	Williams	84.87
	Wood	93.01
	Wyandot	86.56
Oklahoma	Adair	52.67
	Alfalfa	25.52
	Atoka	33.91
	Beaver	17.33
	Beckham	27.26
	Blaine	22.99
	Bryan	43.90
	Caddo	30.01
	Canadian	41.25
	Carter	38.72
	Cherokee	51.24
	Choctaw	36.94
	Cimarron	13.78
	Cleveland	66.12
	Coal	34.24
	Comanche	31.55
	Cotton	26.76
	Craig	36.14
	Creek	43.73
	Custer	29.43
	Delaware	57.10
	Dewey	23.13
	Ellis	19.94
	Garfield	28.00
	Garvin	36.58
	Grady	35.53
	Grant	24.45
	Greer	19.72
	Harmon	23.54
	Harper	19.14
	Haskell	35.37
	Hughes	32.40
	Jackson	23.87
	Jefferson	28.99
	Johnston	33.50
	Kay	28.44
	Kingfisher	30.89
	Kiowa	25.33
	Latimer	34.65
	Le Flore	45.88
	Lincoln	45.00
	Logan	38.04
	Love	41.20
	McClain	46.29
	McCurtain	43.54
	McIntosh	36.36
	Major	25.94
	Marshall	41.67
	Mayes	54.04
	Murray	38.34
	Muskogee	44.83
	Noble	31.52
	Nowata	33.09
	Okfuskee	32.62
	Oklahoma	70.82
	Okmulgee	47.94
	Osage	25.83
	Ottawa	49.29
	Pawnee	34.27
	Payne	45.63
	Pittsburg	33.55
	Pontotoc	38.64
	Pottawatomie	39.16
	Pushmataha	35.75
	Roger Mills	21.26
	Rogers	58.86
	Seminole	38.09
	Sequoyah	46.45
	Stephens	32.98
	Texas	18.73
	Tillman	22.77
	Tulsa	79.90
	Wagoner	48.90
	Washington	40.40
	Washita	27.53
	Woods	22.20
	Woodward	22.80
Oregon	Baker	22.12
	Benton	101.80
	Clackamas	261.53
	Clatsop	116.14
	Columbia	123.57
	Coos	71.43
	Crook	18.20
	Curry	66.84
	Deschutes	131.18
	Douglas	64.78
	Gilliam	8.44
	Grant	12.71
	Harney	9.96
	Hood River	337.04
	Jackson	111.32
	Jefferson	15.43
	Josephine	168.56
	Klamath	30.10
	Lake	17.70
	Lane	141.60
	Lincoln	99.99
	Linn	82.82
	Malheur	20.94
	Marion	131.61
	Morrow	14.08
	Multnomah	241.09
	Polk	104.27
	Sherman	11.96
	Tillamook	118.81
	Umatilla	22.04
	Union	28.67
	Wallowa	21.91
	Wasco	14.10
	Washington	194.05
	Wheeler	8.84
	Yamhill	168.71
Pennsylvania	Adams	174.70
	Allegheny	158.19
	Armstrong	85.56
	Beaver	133.74
	Bedford	94.31
	Berks	188.18
	Blair	112.93
	Bradford	83.48
	Bucks	272.11
	Butler	124.61
	Cambria	95.08
	Cameron	54.52
	Carbon	149.52
	Centre	139.32
	Chester	293.68
	Clarion	79.35
	Clearfield	69.07
	Clinton	115.50
	Columbia	115.12
	Crawford	78.86
	Cumberland	173.56
	Dauphin	166.83
	Delaware	356.03
	Elk	93.49
	Erie	109.51
	Fayette	99.75
	Forest	90.51
	Franklin	166.23
	Fulton	95.40
	Greene	85.53
	Huntingdon	100.05
	Indiana	99.23
	Jefferson	74.60
	Juniata	126.03
	Lackawanna	134.89
	Lancaster	254.96
	Lawrence	103.85
	Lebanon	227.48
	Lehigh	160.62
	Luzerne	129.28
	Lycoming	94.58
	McKean	57.81
	Mercer	87.23
	Mifflin	126.55
	Monroe	193.30
	Montgomery	274.13
	Montour	139.92
	Northampton	166.34
	Northumberland	110.42
	Perry	120.84
	Philadelphia	957.90
	Pike	45.50
	Potter	71.01
	Schuylkill	137.05
	Snyder	136.20
	Somerset	78.18
	Sullivan	67.81
	Susquehanna	89.66
	Tioga	80.86
	Union	161.55
	Venango	75.01
	Warren	71.94
	Washington	120.81
	Wayne	113.12
	Westmoreland	123.16
	Wyoming	95.10
	York	155.32
Puerto Rico	All Areas	211.59
Rhode Island	Bristol	640.29
	Kent	335.60
	Newport	570.30
	Providence	438.42
	Washington	366.08
South Carolina	Abbeville	73.10
	Aiken	97.12
	Allendale	49.35
	Anderson	106.68
	Bamberg	58.09
	Barnwell	70.42
	Beaufort	59.72
	Berkeley	93.14
	Calhoun	66.30
	Charleston	187.66
	Cherokee	76.30
	Chester	84.75
	Chesterfield	64.03

State	County	Fee/acre/Yr
	Clarendon	53.57
	Colleton	53.84
	Darlington	47.78
	Dillon	54.63
	Dorchester	90.35
	Edgefield	82.52
	Fairfield	75.89
	Florence	69.88
	Georgetown	73.94
	Greenville	153.35
	Greenwood	75.89
	Hampton	59.77
	Horry	93.71
	Jasper	55.20
	Kershaw	82.50
	Lancaster	99.67
	Laurens	83.77
	Lee	57.31
	Lexington	119.33
	McCormick	68.71
	Marion	64.95
	Marlboro	49.51
	Newberry	79.17
	Oconee	147.23
	Orangeburg	61.10
	Pickens	155.43
	Richland	86.26
	Saluda	75.35
	Spartanburg	132.49
	Sumter	54.06
	Union	69.61
	Williamsburg	65.98
	York	108.09
South Dakota	Aurora	37.82
	Beadle	36.05
	Bennett	10.26
	Bon Homme	40.55
	Brookings	58.99
	Brown	43.73
	Brule	29.03
	Buffalo	15.18
	Butte	13.55
	Campbell	20.26
	Charles Mix	34.72
	Clark	40.31
	Clay	64.30
	Codington	43.29
	Corson	10.39
	Custer	15.90
	Davison	47.16
	Day	34.06
	Deuel	43.48
	Dewey	9.70
	Douglas	40.58
	Edmunds	28.36
	Fall River	11.17
	Faulk	26.81
	Grant	43.95
	Gregory	20.12
	Haakon	11.75
	Hamlin	51.69
	Hand	25.68
	Hanson	54.04
	Harding	10.06
	Hughes	23.06
	Hutchinson	50.64
	Hyde	17.64
	Jackson	9.90
	Jerauld	25.32
	Jones	10.81
	Kingsbury	41.94
	Lake	66.68
	Lawrence	39.95
	Lincoln	84.87
	Lyman	17.31
	McCook	57.91
	McPherson	20.73
	Marshall	32.21
	Meade	13.90
	Mellette	10.01
	Miner	41.69
	Minnehaha	76.27
	Moody	69.30
	Pennington	18.96
	Perkins	11.33
	Potter	25.74
	Roberts	40.64
	Sanborn	34.00
	Shannon	5.89
	Spink	37.96
	Stanley	10.95
	Sully	24.96
	Todd	8.07
	Tripp	20.12
	Turner	62.03
	Union	71.38
	Walworth	20.04
	Yankton	54.54
	Ziebach	8.27
Tennessee	Anderson	147.32
	Bedford	101.98
	Benton	61.64
	Bledsoe	87.84
	Blount	153.33
	Bradley	132.49
	Campbell	95.78
	Cannon	89.16
	Carroll	70.08
	Carter	111.44
	Cheatham	113.04
	Chester	67.32
	Claiborne	85.71
	Clay	68.12
	Cocke	104.08
	Coffee	96.63
	Crockett	64.48
	Cumberland	96.74
	Davidson	171.51
	Decatur	58.02
	DeKalb	87.67
	Dickson	93.52
	Dyer	75.87
	Fayette	89.11
	Fentress	96.33
	Franklin	102.92
	Gibson	70.60
	Giles	87.26
	Grainger	104.41
	Greene	117.76
	Grundy	89.41
	Hamblen	105.16
	Hamilton	150.00
	Hancock	81.49
	Hardeman	68.39
	Hardin	70.30
	Hawkins	100.33
	Haywood	66.74
	Henderson	64.51
	Henry	74.82
	Hickman	75.51
	Houston	66.57
	Humphreys	71.01
	Jackson	75.10
	Jefferson	129.04
	Johnson	120.49
	Knox	178.49
	Lake	76.17
	Lauderdale	60.20
	Lawrence	85.52
	Lewis	78.96
	Lincoln	94.81
	Loudon	136.32
	McMinn	110.97
	McNairy	60.92
	Macon	90.15
	Madison	77.25
	Marion	100.08
	Marshall	90.04
	Maury	104.36
	Meigs	98.73
	Monroe	112.77
	Montgomery	89.30
	Moore	90.51
	Morgan	79.67
	Obion	70.30
	Overton	89.55
	Perry	58.36
	Pickett	95.86
	Polk	128.65
	Putnam	114.75
	Rhea	99.12
	Roane	117.21
	Robertson	105.98
	Rutherford	126.11
	Scott	86.51
	Sequatchie	93.35
	Sevier	152.45
	Shelby	128.49
	Smith	86.95
	Stewart	74.74
	Sullivan	140.48
	Sumner	111.55
	Tipton	64.84
	Trousdale	89.22
	Unicoi	199.39
	Union	101.05
	Van Buren	78.51
	Warren	97.41
	Washington	152.07
	Wayne	60.73
	Weakley	69.80
	White	90.62
	Williamson	148.01
	Wilson	112.90
Texas	Anderson	59.42
	Andrews	9.05
	Angelina	74.49
	Aransas	36.74
	Archer	25.90
	Armstrong	23.00
	Atascosa	43.74
	Austin	90.84
	Bailey	24.17
	Bandera	61.02
	Bastrop	73.03
	Baylor	15.63
	Bee	37.94
	Bell	62.80
	Bexar	72.92
	Blanco	66.69
	Borden	15.41
	Bosque	57.45
	Bowie	49.30
	Brazoria	58.25
	Brazos	73.45
	Brewster	9.13
	Briscoe	16.48
	Brooks	27.66
	Brown	48.05
	Burleson	60.09
	Burnet	60.25
	Caldwell	61.68
	Calhoun	42.41
	Callahan	33.86
	Cameron	51.46
	Camp	72.49
	Carson	21.72
	Cass	57.37
	Castro	27.53
	Chambers	38.63
	Cherokee	61.95
	Childress	18.98
	Clay	35.19
	Cochran	23.24
	Coke	20.85
	Coleman	34.26
	Collin	92.17
	Collingsworth	22.95
	Colorado	62.88
	Comal	80.03
	Comanche	52.42
	Concho	27.18
	Cooke	66.26
	Coryell	53.35
	Cottle	17.14
	Crane	10.17
	Crockett	10.84
	Crosby	18.37
	Culberson	8.04

State	County	Fee/acre/Yr
	Dallam	22.50
	Dallas	87.99
	Dawson	22.66
	Deaf Smith	24.31
	Delta	42.97
	Denton	95.15
	DeWitt	49.41
	Dickens	21.96
	Dimmit	26.81
	Donley	17.09
	Duval	27.13
	Eastland	46.06
	Ector	10.60
	Edwards	21.32
	Ellis	65.09
	El Paso	38.98
	Erath	63.97
	Falls	42.28
	Fannin	51.62
	Fayette	73.40
	Fisher	24.12
	Floyd	26.86
	Foard	18.64
	Fort Bend	61.55
	Franklin	60.06
	Freestone	46.43
	Frio	35.94
	Gaines	25.32
	Galveston	65.17
	Garza	16.35
	Gillespie	69.27
	Glasscock	19.62
	Goliad	43.34
	Gonzales	56.47
	Gray	19.41
	Grayson	80.77
	Gregg	91.21
	Grimes	64.99
	Guadalupe	69.27
	Hale	30.86
	Hall	22.20
	Hamilton	45.55
	Hansford	21.46
	Hardeman	21.59
	Hardin	60.51
	Harris	89.77
	Harrison	58.76
	Hartley	18.00
	Haskell	23.64
	Hays	75.21
	Hemphill	19.38
	Henderson	65.12
	Hidalgo	58.06
	Hill	49.01
	Hockley	28.46
	Hood	72.68
	Hopkins	60.86
	Houston	54.60
	Howard	20.45
	Hudspeth	7.53
	Hunt	65.65
	Hutchinson	17.78
	Irion	16.59
	Jack	39.61
	Jackson	36.31
	Jasper	74.57
	Jeff Davis	7.43
	Jefferson	37.03
	Jim Hogg	17.20
	Jim Wells	38.90
	Johnson	90.73
	Jones	29.20
	Karnes	45.95
	Kaufman	69.59
	Kendall	72.36
	Kenedy	15.44
	Kent	16.03
	Kerr	47.49
	Kimble	39.72
	King	10.09
	Kinney	24.09
	Kleberg	31.49
	Knox	22.74
	Lamar	43.82
	Lamb	27.61
	Lampasas	49.46
	La Salle	29.68
	Lavaca	56.65
	Lee	69.09
	Leon	53.75
	Liberty	53.22
	Limestone	41.69
	Lipscomb	19.35
	Live Oak	39.69
	Llano	50.18
	Loving	3.49
	Lubbock	31.92
	Lynn	23.56
	McCulloch	35.38
	McLennan	54.90
	McMullen	27.98
	Madison	55.88
	Marion	53.96
	Martin	17.17
	Mason	48.77
	Matagorda	36.74
	Maverick	24.04
	Medina	52.50
	Menard	28.99
	Midland	23.13
	Milam	50.96
	Mills	44.86
	Mitchell	21.88
	Montague	54.84
	Montgomery	100.87
	Moore	22.84
	Morris	60.33
	Motley	15.84
	Nacogdoches	64.45
	Navarro	42.92
	Newton	50.00
	Nolan	27.34
	Nueces	34.34
	Ochiltree	21.62
	Oldham	8.68
	Orange	67.46
	Palo Pinto	51.59
	Panola	52.87
	Parker	97.12
	Parmer	27.13
	Pecos	7.21
	Polk	61.15
	Potter	17.62
	Presidio	11.07
	Rains	64.48
	Randall	30.51
	Reagan	13.36
	Real	28.75
	Red River	35.38
	Reeves	8.39
	Refugio	19.49
	Roberts	17.92
	Robertson	53.64
	Rockwall	120.15
	Runnels	30.00
	Rusk	54.50
	Sabine	68.18
	San Augustine	52.87
	San Jacinto	69.94
	San Patricio	32.99
	San Saba	43.26
	Schleicher	24.07
	Scurry	23.88
	Shackelford	22.34
	Shelby	74.81
	Sherman	21.67
	Smith	83.49
	Somervell	84.42
	Starr	32.93
	Stephens	32.83
	Sterling	9.77
	Stonewall	17.81
	Sutton	21.19
	Swisher	19.33
	Tarrant	96.56
	Taylor	32.91
Utah	Beaver	27.85
	Box Elder	10.98
	Cache	37.60
	Carbon	12.81
	Daggett	18.89
	Davis	64.33
	Duchesne	7.91
	Emery	15.43
	Garfield	31.49
	Grand	5.02
	Iron	19.23
	Juab	14.07
	Kane	17.88
	Millard	14.14
	Morgan	16.40
	Piute	33.69
	Rich	9.69
	Salt Lake	38.89
	San Juan	4.32
	Sanpete	26.29
	Sevier	23.74
	Summit	17.23
	Tooele	19.62
	Uintah	6.38
	Utah	51.19
	Wasatch	57.41
	Washington	37.31
	Wayne	32.70
	Weber	59.27
Vermont	Addison	71.81
	Bennington	100.86
	Caledonia	72.17
	Chittenden	103.89
	Essex	42.63
	Franklin	68.10
	Grand Isle	98.56
	Lamoille	85.38
	Orange	80.98
	Orleans	63.23
	Rutland	68.34
	Washington	94.57
	Windham	101.43
	Windsor	109.77
Virginia	Accomack	83.35
	Albemarle	160.34
	Alleghany	78.28
	Amelia	98.69
	Amherst	84.37
	Appomattox	76.91
	Arlington	116.05
	Terrell	5.99
	Terry	23.56
	Throckmorton	23.21
	Titus	54.66
	Tom Green	28.73
	Travis	75.40
	Trinity	51.20
	Tyler	74.65
	Upshur	68.79
	Upton	13.66
	Uvalde	28.94
	Val Verde	12.17
	Van Zandt	81.01
	Victoria	41.29
	Walker	65.25
	Waller	87.93
	Ward	9.85
	Washington	98.72
	Webb	19.89
	Wharton	46.99
	Wheeler	18.10
	Wichita	25.85
	Wilbarger	19.65
	Willacy	31.79
	Williamson	74.97
	Wilson	62.86
	Winkler	6.98
	Wise	83.91
	Wood	77.15
	Yoakum	22.52
	Young	33.49
	Zapata	24.47
	Zavala	28.01

State	County	Fee/acre/Yr
	Augusta	134.89
	Bath	102.52
	Bedford	130.21
	Bland	81.07
	Botetourt	116.93
	Brunswick	68.73
	Buchanan	116.05
	Buckingham	84.84
	Campbell	92.39
	Caroline	128.42
	Carroll	113.13
	Charles City	99.30
	Charlotte	73.49
	Chesterfield	155.22
	Clarke	188.05
	Craig	97.81
	Culpeper	163.45
	Cumberland	107.51
	Dickenson	87.92
	Dinwiddie	87.68
	Essex	89.33
	Fairfax	353.71
	Fauquier	159.21
	Floyd	114.48
	Fluvanna	137.04
	Franklin	114.78
	Frederick	161.03
	Giles	86.19
	Gloucester	154.89
	Goochland	145.77
	Grayson	127.09
	Greene	180.53
	Greensville	76.30
	Halifax	76.30
	Hanover	156.10
	Henrico	149.41
	Henry	86.08
	Highland	83.60
	Isle of Wight	87.13
	James City	231.30
	King and Queen	99.58
	King George	115.61
	King William	105.94
	Lancaster	116.85
	Lee	75.50
	Loudoun	203.48
	Louisa	135.00
	Lunenburg	81.04
	Madison	159.16
	Mathews	157.15
	Mecklenburg	87.15
	Middlesex	138.63
	Montgomery	113.71
	Nelson	129.05
	New Kent	147.04
	Northampton	108.47
	Northumberland	104.56
	Nottoway	96.30
	Orange	152.77
	Page	169.57
	Patrick	95.64
	Pittsylvania	86.96
	Powhatan	177.06
	Prince Edward	84.78
	Prince George	103.63
	Prince William	202.07
	Pulaski	100.46
	Rappahannock	171.14
	Richmond	101.39
	Roanoke	139.38
	Rockbridge	119.90
	Rockingham	169.40
	Russell	77.98
	Scott	81.23
	Shenandoah	148.61
	Smyth	91.12
	Southampton	71.37
	Spotsylvania	139.85
	Stafford	243.14
	Surry	90.98
	Sussex	87.07
	Tazewell	62.94
	Warren	174.97
	Washington	121.03
	Westmoreland	99.16
	Wise	76.85
	Wythe	108.20
	York	487.11
	Chesapeake City	148.25
	Suffolk	125.44
	Virginia Beach City.	171.52
Washington	Adams	18.30
	Asotin	14.85
	Benton	41.51
	Chelan	130.09
	Clallam	187.43
	Clark	236.41
	Columbia	17.83
	Cowlitz	136.02
	Douglas	19.71
	Ferry	7.88
	Franklin	38.62
	Garfield	14.46
	Grant	44.58
	Grays Harbor	47.84
	Island	219.70
	Jefferson	130.37
	King	317.86
	Kitsap	333.58
	Kittitas	69.83
	Klickitat	22.26
	Lewis	105.66
	Lincoln	17.80
	Mason	146.94
	Okanogan	21.68
	Pacific	59.25
	Pend Oreille	54.00
	Pierce	263.53
	San Juan	155.30
	Skagit	120.55
	Skamania	157.46
	Snohomish	193.22
	Spokane	42.01
	Stevens	24.91
	Thurston	152.85
	Wahkiakum	71.23
	Walla Walla	30.81
	Whatcom	199.88
	Whitman	19.94
	Yakima	27.34
West Virginia	Barbour	45.59
	Berkeley	185.86
	Boone	42.84
	Braxton	44.73
	Brooke	45.51
	Cabell	70.04
	Calhoun	42.96
	Clay	46.04
	Doddridge	40.82
	Fayette	56.86
	Gilmer	40.54
	Grant	64.57
	Greenbrier	66.96
	Hampshire	132.58
	Hancock	75.87
	Hardy	84.61
	Harrison	57.77
	Jackson	54.83
	Jefferson	188.44
	Kanawha	75.73
	Lewis	47.03
	Lincoln	41.15
	Logan	78.78
	McDowell	61.66
	Marion	58.86
	Marshall	51.83
	Mason	61.80
	Mercer	61.13
	Mineral	76.92
	Mingo	27.36
	Monongalia	76.53
	Monroe	63.66
	Morgan	120.29
	Nicholas	56.14
	Ohio	58.80
	Pendleton	59.02
	Pleasants	57.88
	Pocahontas	56.30
	Preston	66.35
	Putnam	66.15
	Raleigh	63.77
	Randolph	55.50
	Ritchie	46.42
	Roane	48.09
	Summers	55.64
	Taylor	60.94
	Tucker	53.56
	Tyler	52.17
	Upshur	59.02
	Wayne	50.28
	Webster	54.72
	Wetzel	42.76
	Wirt	44.98
	Wood	63.38
	Wyoming	37.77
Wisconsin	Adams	86.06
	Ashland	58.21
	Barron	67.29
	Bayfield	58.95
	Brown	106.54
	Buffalo	69.76
	Burnett	69.54
	Calumet	103.80
	Chippewa	67.61
	Clark	67.94
	Columbia	101.76
	Crawford	70.52
	Dane	117.62
	Dodge	99.61
	Door	91.55
	Douglas	55.77
	Dunn	76.06
	Eau Claire	76.01
	Florence	64.19
	Fond du Lac	95.95
	Forest	52.29
	Grant	85.54
	Green	97.01
	Green Lake	94.48
	Iowa	89.43
	Iron	51.61
	Jackson	70.28
	Jefferson	109.80
	Juneau	77.72
	Kenosha	138.24
	Kewaunee	94.91
	La Crosse	78.70
	Lafayette	95.59
	Langlade	69.41
	Lincoln	69.41
	Manitowoc	94.89
	Marathon	74.27
	Marinette	73.10
	Marquette	83.34
	Menominee	31.89
	Milwaukee	195.91
	Monroe	80.62
	Oconto	80.90
	Oneida	77.34
	Outagamie	100.46
	Ozaukee	129.98
	Pepin	74.24
	Pierce	90.76
	Polk	78.37
	Portage	93.45
	Price	52.92
	Racine	129.90
	Richland	76.52
	Rock	109.42
	Rusk	63.05
	St. Croix	103.55
	Sauk	92.17
	Sawyer	80.84
	Shawano	83.67
	Sheboygan	105.10
	Taylor	63.13
	Trempealeau	71.01
	Vernon	80.60

State	County	Fee/acre/Yr
	Vilas	135.09
	Walworth	117.70
	Washburn	74.16
	Washington	138.32
	Waukesha	148.97
	Waupaca	87.74
	Waushara	95.95
	Winnebago	93.39
	Wood	81.68
	Albany	7.46
	Big Horn	13.88
	Campbell	6.17
	Carbon	4.97
	Converse	5.45
	Crook	9.47
	Fremont	14.50
	Goshen	9.45
	Hot Springs	11.62
	Johnson	6.11
	Laramie	7.68
	Lincoln	18.16
	Natrona	5.29
	Niobrara	5.97
	Park	13.14
	Platte	9.69
	Sheridan	12.44
	Sublette	16.04
	Sweetwater	2.83
	Teton	28.89
	Uinta	9.31
	Washakie	9.02
	Weston	7.01

[FR Doc. 2013–04939 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–151; FCC 98–20]

Practice and Procedure; Pole Attachment Complaint Procedures; Allocation of Unusable Space Costs

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the approval by the Office of Management and Budget (OMB) on July 22, 1998 of the information collection requirements in an added section. These requirements were contained in the Commission's Report and Order in CS Docket No. 97–151 that was released on February 6, 1998 and published in the **Federal Register** on March 12, 1998. The Report and Order describes rules and policies concerning a methodology for just and reasonable rates for pole attachments, conduits, and rights-of-way for telecommunications carriers. A section was added as part of the Report and Order at and sets forth the allocation of unusable space costs in the pole attachment rate formula for any telecommunications carrier or cable operator providing telecommunications services.

DATES: Section 1.1417, added at 63 FR 12026, March 12, 1998, has been approved by OMB and is effective March 12, 2013.

SUPPLEMENTARY INFORMATION: On July 22, 1998, OMB approved the information collection requirements contained in § 1.1417 of title 47 of the United States Code as a revision to OMB Control Number 3060–0392.

These information collection requirements required OMB approval to become effective. The Commission publishes this document as an announcement of that approval. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Thomas Butler, Federal Communications Commission, Room 5–C458, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number 3060–0392 in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*. 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).

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval for the information collection requirements described above. The OMB Control Number is 3060–0392. The total annual reporting burden for respondents for this collection of information, including the time for gathering and maintaining the collection of information, has been most recently approved to be 1,772 responses, for a total of 2,629 hours and $450,000 in annual costs.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2013–05668 Filed 3–11–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 43, and 63

[IB Docket No. 04–112; FCC 13–6]

Reporting Requirements for U.S. Providers of International Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) eliminates unnecessary information, streamlines the filing of annual international traffic and revenue and circuit status reports, and modernizes the types of information it collects. The Commission found that the burdens of filing this information outweigh any benefit from the information. To simplify the collection of data on international telecommunications services, the Commission consolidated the traffic and revenue and circuit status reports into one rule and mandated a consolidated Filing Manual that will ensure that future changes to the reports will be coordinated. These actions are part of the Commission's review of its reporting requirements and are intended to remove unnecessary information collections and tailor its information collections to the current state of the international telecommunications market.

DATES: Effective April 11, 2013, except for §§ 1.767(l)(2), 43.61, 43.62, 43.82, 63.10(c)(2) and (4), 63.21(d) and 63.22(e), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those rule changes.

FOR FURTHER INFORMATION CONTACT: John Copes or David Krech, Policy Division, International Bureau, FCC, (202) 418–1460 or via the Internet at *John.Copes@fcc.gov* and *David.Krech@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, IB Docket No. 04–112, FCC 13–6, adopted January 9, 2013, and released January 15, 2013. The full text of the Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at *http://*

transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0125/FCC-13-6A1.pdf. The complete text also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY–B402, 445 12th Street SW., Washington, DC 20554. Customers may contact BCPI at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.

Summary of Second Report and Order

1. In the Second Report and Order, the Federal Communications Commission (Commission), continues its comprehensive review of its international reporting requirements for entities providing international telecommunications services. The Commission's international reporting requirements consist of the annual international traffic and revenue report (currently found in 47 CFR 43.61) and the annual international circuit status report (currently found in 47 CFR 43.82). The Commission adopted a number of changes that affect both such reports. The Commission also adopted a number of specific changes to the traffic and revenue report and changes to the circuit status report.

Changes Affecting Both Reports

2. The Commission decided to consolidate both of the international reports into 47 CFR 43.62. The Commission also decided to consolidate the current separate filing manuals for each report into one consolidated Filing Manual. The Commission determined that having one consolidated rule and one consolidated filing manual for both reports would make it easier for entities required to file on or both of the reports to file their data. To this end, the Commission directed the International Bureau to issue and maintain a consolidated Filing Manual that would provide instructions to filing entities for preparing and submitting both reports. The Commission determined that having a single Filing Manual, with a single set of definitions would make it easier for the Bureau to keep the instructions for both reports consistent with each other. The Commission, however, did not adopt its proposal to consolidate the current separate filing dates for the two reports. Rather, it decided to retain the current separate filing dates.

3. The Commission decided to require each entity that files a traffic and revenue report or a circuit status report also to file each year a Registration Form that elicits basic information about the entity such as company name, address, contact information and a list of any authorizations under section 214 of the Communications Act that the entity may hold. Additionally, the Commission requires any entity that files a traffic and revenue report also to file a Services Checklist under which the entity would check a series of boxes to provide basic information about its operations during the previous year, such as whether the entity provided service in that year, and which would direct the entity as to which schedules it is required to file. The Commission determined that the Registration Form and Services Checklist would allow the Commission to determine which carriers are providing service and to keep its data base updated.

4. To simplify the filing of traffic and revenue and circuit status reports, the Commission will allow filing entities to employ statistical sampling and other estimation techniques where actual counts of data elements are not possible. Finally, the Commission streamlines the procedure for requesting confidential treatment of their traffic and revenue and circuit status reports under 47 CFR 0.459 by allowing them to check a box.

Changes Affecting the Traffic and Revenue Report

5. The Commission simplified the traffic and revenue report by eliminating several current requirements that filing entities must report. The traffic and revenue reports collect information on four classes of international telecommunications services: (1) International message telephone service (IMTS); (2) IMTS resale; (3) international private line service; and (4) international miscellaneous services. The Commission made changes to the reporting of each class of service.

6. IMTS. The Commission eliminated several requirements that will make it simpler for filling entities to prepare and submit the traffic and revenue report for IMTS. Additionally, the Commission modernized the IMTS information that filing entities must report to make such information more relevant to current conditions in the IMTS market. Finally, the Commission requires certain entities that provide an IMTS-like service, voice over internet protocol (VoIP), also to file the traffic and revenue report. First, the Commission eliminates the need for filing entities to report the number of IMTS messages they carry or regional totals for their IMTS traffic. The Commission also allows filing entities to include their country-beyond and country-direct traffic in their world total traffic, rather than report it for each route as they currently do. The Commission replaced the current detailed billing codes under which carriers now report their IMTS traffic and revenues with a set of simple filing schedules. Second, to modernize the information filing entities report, the Commission requires those entities to break down their world-total IMTS traffic and revenues by customer class and routing arrangements. That is, the Commission requires filing entities to break down their IMTS revenues into three customer classes: residential and mass market customers; business and government customers; and other carriers. The Commission requires filing entities to disaggregate their IMTS minutes and revenue payouts between traffic they terminate on foreign fixed landline networks and those terminated on foreign mobile networks. Finally, the Commission required providers of an IMTS-like service, called voice over internet protocol (VoIP) that is interconnected to the public switched telephone network, also to file the IMTS portion of the traffic and revenue report. The Commission noted that, while the providers of these services are not classified as common carriers, customers view the service as a substitute for IMTS. The Commission concluded that recent declines in IMTS traffic are attributable to customers' switching to interconnected VoIP and that, without information on such services, it would not have an adequate view of the international voice market.

7. IMTS Resale. The Commission a $5 million revenue threshold for the reporting of international resale IMTS traffic (the provision of IMTS by purchasing IMTS from another carrier and selling it to the reseller's customers). With respect to resale IMTS the threshold will eliminate the need for 1,000 small carriers to file a report.

8. International Private Line Service. The Commission eliminated the current requirement that filing entities disaggregate their private line services (the provision of channel of communications, usually on a monthly leased basis, into six categories based on speed, allowing them instead to report their private line traffic and services provided over resold private lines only on a world-total basis. The Commission also eliminated the requirement for facilities-based carriers to report those lines on a route-by-route basis, allowing them to report them only on a world-total basis.

9. International Data and Miscellaneous Services. The Commission adopted its proposal to allow carriers that provide certain classes of international data services to include those services in the category of international miscellaneous services, rather than with their private line

services as they now do. These services, referred to as virtual private lines, consist of offering customers the use of a carrier's network for a stated period. The Commission concluded that these services closely resemble various new data services that carriers have recently introduced. The Commission also adopted its proposal to allow filing entities to report all their international miscellaneous services on a world-total basis, rather than route by route, as they now report such services. Finally, the Commission adopted a $ 5 million revenue threshold below which a provider of an international miscellaneous service need not report its traffic or revenues for that service.

Changes Affecting the Circuit Status Report

10. The Commission adopted a number of changes to simplify the circuit status report that common carriers, and some non-common carrier providers of international satellite transmission facilities, currently file each year. The circuit status report requires filing entities to provide information on the capacity and use of their international transmission circuits. The Commission simplified the circuit status report by eliminating the current requirement that carriers report their circuits on a route-by-route basis, allowing them to report them on a world-total basis, instead. The Commission also eliminated the requirement that carriers report the number of their idle circuits or the destination of the circuits. Rather, it will require filing entities to report only their total active 64 kilobit per second (KBpS) equivalent circuits. With respect to non-common carrier providers of international satellite networks, the Commission similarly will require such providers similarly to provide information only on their active 64 KBpS circuits. The Commission concluded that this would not be a burden on such entities, because they must file the same information when they pay their annual regulatory fees. With respect to submarine cable systems, the Commission will require both common carrier and non-common carriers providers of such circuits to report only the capacity of their cables. Such providers will no longer be required to report the number of 64 KBpS circuits on their facilities or the destination to which those circuits are sued. Rather, the Commission will require filing entities to report, as of December 31 of the previous year, the capacity of their cables in STM–1 (Synchronous Transport Module level 1) units, which is now the standard commercial unit for the sale or leasing of cable capacity. The Commission will also require filing entities to report their capacity in terms of the ownership interest (ownership, indefeasible right of use, or an inter-carrier lease). Additionally, the Commission will require filing entities to report the planned capacity of new cables in gigabit per second (GBpS) units.

Paperwork Reduction Act of 1995 Analysis

11. This Second Report and Order adopts new or revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. These information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new or revised information collection requirement(s) adopted in this document. The requirement(s) will not go into effect until OMB has approved it and the Commission has published a notice announcing the effective date of the information collection requirement(s). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Final Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act, as amended (RFA),[1] the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the Further Notice of Proposed Rulemaking (NPRM) in this proceeding.[2] The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) addresses the policies and rules that the Commission adopted in the Second Report and Order in this proceeding. This Second Report and Order retains the annual Traffic and Revenue Report and the annual Circuit Status Report. The Second Report and Order adopts some measures, as described below, to simplify compliance with the reporting requirements but generally does not alter either report. The Commission considered a number of proposals to streamline the reports and to improve the information that carriers will provide in the Further Notice of Proposed Rulemaking portion of this proceeding. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

13. The Commission initiated this comprehensive review of the reporting requirements imposed on U.S. carriers providing international telecommunications services. The Commission believes that the decisions in the Second Report and Order will make it easier for carriers, both small and large, to provide the information required by the rules, while providing the Commission with information it needs but does not receive on an annual basis. In addition, section 11 of the Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of certain regulations issued under the Communications Act of 1934, as amended.[3]

14. The objective of the Second Report and Order in this proceeding is to improve the reporting requirements imposed on carriers providing international telecommunications services in the proposed § 43.62(a) and (b). Specifically, the Second Report and Order consolidates, simplifies, and revises the annual traffic and revenue reporting requirements and the circuit status reporting requirements. The rule also requires entities to file some additional information in the traffic and revenue report that they do not now file. Additionally, the rule relieves service providers with annual revenues less than $5 million from filing Traffic and Revenue Reports for IMTS resale and the provision of international miscellaneous services. Finally, the rule requires all providers of international telecommunications services to file an annual Services Report that updates their contact information and indicates whether or not they provided service

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[2] *Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04–112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460 (2004). We note that we may not certify this proceeding under 5 U.S.C. 605, because our action will not have a significant economic effect on a substantial number of small entities (as discussed).

[3] Public Law 104–104, 110 Stat. 56 (1996).

during the preceding calendar year. The Second Report and Order also requires some additional entities that provide international telecommunications services to file the annual Traffic and Revenue Report and some additional entities that provide international facilities to file the annual Circuit Status Report.

15. Section 43.61 requires all U.S. carriers providing international telecommunications services to file an annual report of their traffic and revenues. Under the consolidated § 43.62(b), those same carriers and some additional entities that provide international telecommunications services will file similar traffic and revenue information. Section 43.82 requires all U.S. facilities-based carriers providing international telecommunications services to file an annual report on the status of their circuits. Under the new § 43.62(a), those same carriers and some other providers of international telecommunications facilities will file similar circuit status information. The information derived from the international Traffic and Revenue Report and Circuit Status Report is critical in understanding the international telecommunications market. These reports are the only source of information of this nature.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

16. No comments were received on the IRFA analysis.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposals, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

18. The policies adopted in the Second Report and Order apply to entities providing international common carrier services pursuant to section 214 of the Communications Act; entities providing international wireless common carrier services under section 309 of the Act; entities providing common carrier satellite services under section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act. The Commission has not developed a small business size standard directed specifically toward these entities. As described below, such entities fit within larger categories for which the SBA has developed size standards.

1. Traffic and Revenue Report

19. The policies adopted in the Second Report and Order apply only to entities providing international common carrier services pursuant to section 214 of the Communications Act; entities that operate a telecommunications "spot market" that themselves carry international traffic; entities providing domestic or international wireless common carrier services under section 309 of the Act; entities providing common carrier satellite facilities under section 309 of the Act; entities licensed to construct and operate submarine cables under the Cable Landing License Act on a common carrier basis; and entities that provide international terrestrial telecommunications facilities on a common carrier basis (including incumbent local exchange carriers that offer such facilities). At present, carriers that provide international telecommunications services are required to file the annual traffic and revenue report. The requires entities providing VoIP service interconnected with the public switched telephone network also to file the Traffic and Revenue Report. The Second Report and Order also requires all filing entities file a Services Report with information about the filing entity—such as address, phone number, email address, and the international section 214 authorizations held by the carrier. Further, the Second Report and Order adopts a number of changes that would simplify the Traffic and Revenue Report, as well as requiring some new information.

20. The entities that the Second Report and Order proposes to require to file the Traffic and Revenue Report are a mixture of both large and small entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, as described below, these entities fit into larger categories for which the SBA has developed size standards that provide these facilities or services.

21. Facilities-based Carriers. Facilities-based providers of international telecommunications services would fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[8] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[9] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[10] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[11] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted in the Second Report and Order.

22. In the 2010 annual traffic and revenue report, 31 facilities-based and facilities-resale carriers reported approximately $4.0 billion in revenues from international message telephone service (IMTS). Of these, three reported IMTS revenues of more than $1 billion,

[4] 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[7] 15 U.S.C. 632.

[8] 13 CFR 121.201, NAICS code 517110.

[9] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[10] *See* Trends in Telephone Service at Table 5.3.

[11] *See id.*

six reported IMTS revenues of more than $100 million, nine reported IMTS revenues of more than $50 million, 19 reported IMTS revenues of more than $10 million, 23 reported IMTS revenues of more than $5 million, and 26 reported IMTS revenues of more than $1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.[12]

23. The 2010 traffic and revenue report also shows that 46 facilities-based and facilities-resale carriers (including 13 who also reported IMTS revenues) reported $505 million for international private line services; of which one reported private line revenues of more than $50 million, 11 reported private line revenues of more than $10 million, 31 reported revenues of more than $1 million, 33 reported private line revenues of more than $500,000; 39 reported revenues of more than $100,000, while one reported revenues of less than $10,000.

24. The 2010 traffic and revenue report also shows that eight carriers (including one that reported both IMTS and private line revenues, one that reported IMTS revenues and five that reported private line revenues) reported $19 million for international miscellaneous services, of which two reported miscellaneous services revenues of more than $1 million, three reported revenues of more than $500,000, four reported revenues of more than $200,000, six reported revenues of more than $50,000, while one reported revenues of less than $20,000. Based on its miscellaneous services revenue, this one carrier with revenues of less than $20,000 would be considered a small business under the SBA definition. Based on their private line revenues, most of these entities would be considered non-small entities under the SBA definition.

25. IMTS Resale Providers. Providers of IMTS resale services are common carriers that purchase IMTS from other carriers and resell it to their own customers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[13] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[14] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. In the 2010 traffic and revenue report, 1,211 carriers reported that they provided IMTS on a pure resale basis.[15] Based on their IMTS resale revenues, IMTS resale service is primarily provided by carriers that would be considered small businesses under the SBA definition. For example, of the 1,211 IMTS resale carriers, 656 carriers reported revenues of less than $10,000; 1,014 had revenues less than $500,000; and 1,053 had revenues less than $1 million.[16] Consequently, the Commission estimates that the majority of IMTS resellers are small entities that may be affected by our action.

26. Wireless Carriers and Service Providers. Included among the providers of IMTS resale are a number of wireless carriers that also provide wireless telephony services domestically. The Commission classifies these entities as providers of Commercial Mobile Radio Services (CMRS). At present, most, if not all, providers of CMRS that offer IMTS provide such service by purchasing IMTS from other carriers to resell it to their customers. The Commission has not developed a size standard specifically for CMRS providers that offer resale IMTS. Such entities would fall within the larger category of wireless carriers and service providers. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

27. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[17] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[18] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[19] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[20] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[21] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[22] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

28. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the Wireless Communications Services (WCS) auction as an entity with average gross revenues of $40

[12] *See* 13 CFR 121.201, NAICS Code at Subsector 517—Telecommunications.

[13] 13 CFR 121.201, NAICS code 517911.

[14] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

[15] *See* FCC, International Bureau, Strategic Analysis and Negotiations Division, *2010 International Telecommunications Data* at page 1–2, Statistical Findings, and Table D at page 22 (March 2012), *available at http://www.fcc.gov/ib/sand/mniab/traffic*.

[16] *Id.*

[17] U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), *http://www.census.gov/naics/2007/def/ND517210.HTM* (last visited March 2, 2011).

[18] U.S. Census Bureau, 2002 NAICS Definitions: Paging, *http://www.census.gov/epcd/naics02/def/NDEF517.HTM* (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, *http://www.census.gov/epcd/naics02/def/NDEF517.HTM* (last visited March 2, 2011).

[19] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[20] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

[21] *See* Trends in Telephone Service at Table 5.3.

[22] *See id.*

million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[23] The SBA has approved these definitions.[24] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

29. Providers of Interconnected VoIP services. In addition to the carriers that now file the annual traffic and revenue report, the Second Report and Order requires entities providing international calling service via Voice over Internet Protocol (VoIP) connected to the public switched telephone network (PSTN) to file data on their international voice traffic. The entities that provide such services are a mix of large and small entities. We do not have information on the size of such VoIP providers. The 2007 Economic Census includes VoIP providers in a larger class called "Internet Service Providers" (ISPs), and classes such ISPs in two categories, depending upon whether the service is provided over the provider's own facilities (*e.g.*, cable or DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers.[25] As a result, for the purpose of this IRFA we shall consider all such entities to be small entities within the meaning of the Small Business Act., which has an SBA small business size standard of 1,500 or fewer employees.[26] The latter are within the category of All Other Telecommunications,[27] which has a size standard of annual receipts of $25 million or less.[28] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[29] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[30] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[31] Consequently, we estimate that the majority of VoIP providers are small entities.

30. Spot Market operators. A "spot market" is a market where IMTS providers can buy or sell call completion services for calls, including IMTS calls. A customer of the spot market enters into a contract with the spot market owner to buy or sell call completion services by interconnecting at a spot market point of presence. The spot market owner acts as broker by facilitating the exchange of calls between spot market customers, who may not know each other's identity. The Commission has not developed a small business size standard specifically for operators of spot markets. As a result, for purposes of this IRFA, we shall consider all such entities to be small businesses.

2. Circuit Status Report

31. The actions we take in the Second Report and Order apply only to entities that have international bearer circuits. The Second Report and Order makes changes to the information that filing entities must provide about international common carrier circuits.

32. Providers of International Telecommunications Transmission Facilities. According to the 2010 Circuit Status Report, 70 U.S. international facility-based carriers filed information pursuant to § 43.82.[32] Some of these providers would fall within the category of Inter-exchange Carriers, some would fall within the category of Wired Telecommunications Carriers, while others may not. The Commission has not developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[33] The circuit-status report does not include employee or revenue statistics, so we are unable to determine how many carriers could be considered small entities under the SBA standard. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those 75 carriers to be small entities at this time. In addition, of the 79 carriers that filed an annual circuit-status report for 2009, there were at least four carriers that reported no circuits owned or in use at the end of 2009.[34]

33. Satellite Telecommunications Providers. Other providers of international transmission facilities are those that operate international common carrier and non-common carrier satellite systems. Such systems provide circuits to providers of international telecommunication services or provide circuits directly to end users. The Second Report and Order requires operators of international satellite services to report their aggregate worldwide active circuits in the Circuit Status Report. The Commission has not determined a size standard specifically for operators of international satellite systems that offer circuits directly to end users. However, two economic census categories address the satellite industry. Under SBA rules, the first category has a small business size standard of $15 million or less in average annual receipts.[35] The second category has a size standard of $25 million or less in annual receipts.[36]

34. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[37] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[38] Of this total, 464

[23] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, GN Docket No. 96–228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[24] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (Alvarez Letter 1998).

[25] U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, *http://www.census.gov/naics/2007/def/ND517110.HTM* (last visited March 2, 2011).

[26] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[27] U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, *http://www.census.gov/naics/2007/def/ND517919.HTM* (last visited March 2, 2011).

[28] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[29] U.S. Census Bureau, 2002 NAICS Definitions: Internet Service Providers, Web Search Portals, and Data Processing Services, *http://www.census.gov/epcd/naics02/def/NDEF518.HTM* (last visited March 2, 2011).

[30] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," at Table 4, NAICS code 518111 (issued Nov. 2005).

[31] An additional 45 firms had receipts of $25 million or more.

[32] *See* International Bureau Releases 2009 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers; Data Reflects Continued Growth of Total Capacity Used (rel. March 30, 2012). The report is available on the FCC Web site at *http://www.fcc.gov/ib/pd/pf/csmanual.htm*.

[33] 13 CFR 121.201, NAICS code 517110.

[34] *Id.*

[35] 13 CFR 121.201, NAICS code 517410.

[36] 13 CFR 121.201, NAICS code 517919.

[37] U.S. Census Bureau, 2007 NAICS Definitions, Satellite telecommunications, *http://www.census.gov/naics/2007/def/ND517410.HTM* (last visited March 2, 2011).

[38] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Satellite Telecommunications") (last visited March 2, 2011).

firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[39] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

35. The second category, *i.e.*, All Other Telecommunications, comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." [40] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[41] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999.[42] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

36. Operators of Non-Common carrier Undersea Cable Systems. The Second Report and Order requires all submarine cable licensees to file data on their circuits on submarine cable facilities. Neither the Commission nor the SBA has developed a size standard specifically for operators of non-common carrier undersea cables. Such entities would fall within the large category of Wired Telecommunications Carriers. The size standard under SBA rules for that category is that such a business is small if it has 1,500 or fewer employees.[43] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 employees or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these carriers can be considered small entities.[44] We do not have data on the number of employees or revenues of operators of non-common carrier undersea cables. Because providers of non-common carrier undersea cables do not now file an annual circuit-status report, we do not know how many such entities provide circuits directly to end users. We do know that a number of such entities pay regulatory fees on such circuits, but the names of such entities are confidential. Because we do not have information on the number of employees or their annual revenues, we shall consider all such providers to be small entities for purposes of this IRFA.

37. Incumbent Local Exchange Carriers. Because some of the international terrestrial facilities that are used to provide international telecommunications services may be owned by incumbent local exchange carriers, we have included small incumbent local exchange carriers in this present RFA analysis, to the extent that such local exchange carriers may operate such international facilities. (Local exchange carriers along the U.S.-border with Mexico or Canada may have local facilities that cross the border.) Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange carriers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[45] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[46] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[47] As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." [48] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[49] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies we adopt in the Second Report and Order. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analysis and determinations in other, non-RFA contexts. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.[50]

[39] *Id.*

[40] U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, *http://www.census.gov/naics/2007/def/ND517919.HTM* (last visited March 2, 2011).

[41] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517919 in the left column for "All Other Telecommunications") (last visited March 2, 2011).

[42] *Id.*

[43] 13 CFR 121.201, NAICS code 517110.

[44] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[45] 13 CFR 121.201, NAICS code 517110.

[46] *See* Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (Trends in Telephone Service).

[47] *See id.*

[48] 15 U.S.C. 632.

[49] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b).

[50] U.S. Census Bureau, American FactFinder, 2007 Economic Census, *http://factfinder.census.gov*, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector * * *," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. The Second Report and Order retains and revises the annual Traffic and Revenue Report and Circuit Status Report, and add the Service Report, because the collection and public reporting of this information continues to be necessary in the public interest. Because carriers currently are required to file the section 43.61 annual traffic and revenue report and the § 43.82 annual circuit-status report, the decision to retain those reports will not impose any additional significant economic burden on small carriers. The Service Report is a simple form whose compliance burden is de minimis. The decision to retain the reporting of IMTS and international private lines on a route-by-route basis similarly continues requirement of the current § 43.61. As a result, this conclusion will also not impose any significant additional burden on small carriers.

39. The revisions the Second Report and Order makes to the reporting requirements will reduce overall compliance requirements and burden. Particularly, the elimination of the use of billing codes in the Traffic and Revenue Report, the requirement that filers include only the terminating legs of their reoriginated traffic, the requirement that filers report traditional transit traffic only on a world total basis, the requirement that filers report international data services only on a world-total basis, and the elimination of the current requirements that filers disaggregate their private line service data into six categories based on the speed of the service will simplify and lessen compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage or the rule, or any part thereof, for small entities."[51]

41. The Second Report and Order considered consolidating the Traffic and Revenue Report and the Circuit Status Report into a single, annual report. We did not, however, adopt this consolidation because the timing of the availability of data makes it impossible for these two reports to be consolidated while providing us with information we need to perform our duties in a timely manner.

42. The establishment of a $5 million revenue threshold below which a filing entity need not file annual traffic and revenue data for international resale services or miscellaneous services will considerably ease the reporting burden on small entities. The Second Report and Order also considered requiring a requirement to correct any errors in the reported data of over one percent in the Traffic and Revenue Report on an ongoing basis. We rejected this requirement, however, retaining the requirement that filers need only file a single correction 90 days after filing the report. This decision will simplify compliance for all filers.

Report to Congress

43. The Commission will send a copy of this Second Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act.[52] In addition, the Commission will send a copy of the Second Report and Order, including a copy of this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[53]

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

44. None.

Ordering Clauses

45. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i)–(j), 11, 201–205, 211, 214, 219, 220, 303(r), 309 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 161, 201–205, 211, 214, 219–220, 303(r), 309 and 403, the policies, rules and requirements discussed in this Second Report and Order *are adopted* and parts 43 and 63 of the Commission's rules, 47 CFR parts 43 and 63, *are amended* as set forth in Appendix C. These rule revisions contain modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date, after the International Bureau has made revisions to the International Bureau Filing System (IBFS) necessary to implement the revised reporting requirements adopted here.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

47. *It is further ordered* that the Chief, International Bureau, shall issue a Public Notice announcing when the changes adopted in this Second Report and Order take effect, and shall issue a Public Notice releasing the Manual for Filing § 43.62 Annual Reports.

48. *It is further ordered* that the Chief, International Bureau, shall maintain and revise the Filing Manual and filing schedules as needed, and shall give notice of proposed updates by Public Notice, providing the public opportunity to comment on the proposed updates, and shall inform the public of updates by Public Notice.

49. *It is further ordered* that this proceeding, IB Docket No. 04–112, *is hereby terminated.*

List of Subjects in 47 CFR Parts 1, 43 and 63

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 43 and 63 as follows:

PART 1—GENERAL RULES OF PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

[51] 5 U.S.C. 603(c)(1)–(4).

[52] *See* 5 U.S.C. 801(a)(1)(A).

[53] *See* 5 U.S.C. 604(b).

■ 2. Section 1.767 is amended by revising paragraph (l)(2) to read as follows:

§ 1.767 Cable landing licenses.

(l) * * *

(2) File quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (terrestrial, satellite and submarine cable).

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES

■ 3. The authority citation for part 43 is revised to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. L. 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C. 35–39.

§ 43.61 [Removed]

■ 4. Remove § 43.61.

■ 5. Add § 43.62 to read as follows:

§ 43.62 Reporting requirements for holders of international Section 214 authorizations and providers of international services.

(a) *Circuit Capacity Reports.* Not later than March 31 of each year:

(1) *Satellite and Terrestrial Circuits.* Each facilities-based common carrier shall file a report showing its active common carrier circuits between the United States and any foreign point as of December 31 of the preceding calendar year in any terrestrial or satellite facility for the provision of service to an end user or resale carrier, which includes active circuits used by themselves or their affiliates. Each non-common carrier satellite licensee shall file a report showing its active circuits between the United States and any foreign point as of December 31 of the preceding calendar sold or leased to any customer, including themselves or their affiliates, other than a carrier authorized by the Commission to provide U.S. international common carrier services.

(2) *International Submarine Cable Capacity*—(i) The licensee(s) of a submarine cable between the United States and any foreign point shall file a report showing the capacity of the submarine cable as of December 31 of the preceding calendar year. The licensee(s) shall also file a report showing the planned capacity of the submarine cable (the intended capacity of the submarine cable two years from December 31 of the preceding calendar year). Only one cable landing licensee shall file the capacity data for each submarine cable. For cables with more than one licensee, the licensees shall determine which licensee will file the reports.

(ii) Each cable landing licensee and common carrier shall file a report showing its capacity on submarine cables between the United States and any foreign point as of December 31 of the preceding calendar year.

(b) *Traffic and revenue reports.* (1) Not later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year.

(2) Not later than July 31 of each year, each common carrier engaged in providing international telecommunications service, and each person or entity engaged in providing Voice over Internet Protocol service connected to the public switched telephone network, between the United States and any foreign point shall file a report with the Commission showing revenues, payouts, and traffic for such international telecommunications service and Voice over Internet Protocol service connected to the public switched telephone network provided during the preceding calendar year.

(3) Entities filing such reports shall submit a revised report by October 31 identifying and correcting any inaccuracies included in the annual report exceeding one percent of the reported figure.

Note to Paragraphs (a) and (b): United States is defined in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(c)(1) A Registration Form, containing information about the filer, such as address, phone number, email address, etc., shall be filed with each report filed pursuant to paragraphs (a) and (b).

(2) The Registration Form shall include a certification enabling the filer to check a box to indicate that the filer requests that its circuit capacity data or traffic and revenue data be treated as confidential. If a filer checks that box, the Commission shall treat the data contained in the accompanying report as confidential. Upon receipt of a request for inspection of such information, the Commission shall notify the filer; at that point, the filer must justify continued confidentiality of the information consistent with section 0.459(b) of the Commission's rules.

(d) *Filing Manual.* Authority is delegated to the Chief, International Bureau to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. The information required under this section shall be furnished in conformance with the instructions and reporting requirements in the Filing Manual.

Note to Paragraph (d): The instructions and reporting requirements prepared by the Chief, International Bureau, shall be consistent with the terms of Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112, Second Report and Order, FCC 13–6 (rel. January 15, 2013).

§ 43.82 [Removed]

■ 6. Remove § 43.82.

PART 63—EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 7. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 8. Section 63.10 is amended by revising paragraphs (c)(2) and (4) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(2) File quarterly reports on traffic and revenue within 90 days from the end of each calendar quarter consistent with the format set out by the § 43.62 filing manual.

* * * * *

(4) In the case of an authorized facilities-based carrier, file quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (terrestrial, satellite and submarine cable).

* * * * *

§ 63.18 [Amended]

■ 9. Section 63.18 is amended by removing and reserving paragraph (l).

■ 10. Section 63.21 is amended by revising paragraph (d) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(d) Carriers must file annual international telecommunications traffic and revenue as required by § 43.62 of this chapter.

* * * * *

■ 11. Section 63.22 is amended by revising paragraph (e) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(e) The carrier shall file annual international circuit capacity reports as required by § 43.62 of this chapter.

* * * * *

[FR Doc. 2013–05662 Filed 3–11–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0075]; [4500030115]

RIN 1018–AY28

Endangered and Threatened Wildlife and Plants; Listing the Yellow-Billed Parrot With Special Rule, and Correcting the Salmon-Crested Cockatoo Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and correcting amendment.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status for the yellow-billed parrot *(Amazona collaria)* under the Endangered Species Act of 1973, as amended (Act). This final rule implements the Federal protections provided by the Act for this species. We are also publishing a special rule for this species. In addition, we are correcting the special rule for the salmon-crested cockatoo (*Cacatua moluccensis*), which published in the **Federal Register** on May 26, 2011.

DATES: This rule becomes effective April 11, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 400; Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

We are listing the yellow-billed parrot as threatened under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) because of continued threats from deforestation, the pet trade, the risk of disease transmission, predation, inadequate regulatory mechanisms, and hurricanes. The species is only found on the island of Jamaica and has a fragmented and declining population. We are also publishing a special rule that allows the import into and export from the United States of certain captive-bred yellow-billed parrots, and certain acts in interstate commerce of yellow-billed parrots, without a permit under the Act.

We are also correcting the 2011 special rule for the salmon-crested cockatoo to incorporate the provision that certain acts in interstate commerce of salmon-crested cockatoos may proceed without a permit under the Act. This idea was discussed in detail in the 2009 proposed rule and 2011 final rule for this species, but the provision was inadvertently omitted from the language that we codified in the Code of Federal Regulations. This change clarifies the intent of the 2011 final special rule for the salmon-crested cockatoo.

II. Major Provision of the Regulatory Action

This action lists the yellow-billed parrot as threatened on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and allows the import into and export from the United States of certain captive-bred yellow-billed parrots, and allows certain acts in interstate commerce of yellow-billed parrots, without a permit under 50 CFR 17.32. This action is authorized by the Act.

We are also correcting the May 26, 2011 (76 FR 30758), special rule for the salmon-crested cockatoo, as discussed in this rule.

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), is a law that was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the Act, it must first be added to the Federal List of Threatened and Endangered Wildlife or the Federal List of Threatened and Endangered Plants; section 4 of the Act and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to these lists.

Yellow-Billed Parrot

Previous Federal Actions

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species. In our 90-day finding on this petition, we announced the initiation of a status review to list as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), the following 12 parrot species: Blue-headed macaw *(Primolius couloni)*, crimson shining parrot *(Prosopeia splendens)*, great green macaw *(Ara ambiguus)*, grey-cheeked parakeet *(Brotogeris pyrrhoptera)*, hyacinth macaw *(Anodorhynchus hyacinthinus)*, military macaw *(Ara militaris)*, Philippine cockatoo *(Cacatua haematuropygia)*, red-crowned parrot *(Amazona viridigenalis)*, scarlet macaw *(Ara macao)*, white cockatoo *(Cacatua alba)*, yellow-billed parrot *(Amazona collaria)*, and yellow-crested cockatoo *(Cacatua sulphurea)*. We initiated this status review to determine if listing each of the 12 species is warranted, and initiated a 60-day comment period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The public comment period closed on September 14, 2009.

On October 24, 2009, and December 2, 2009, the Service received a 60-day notice of intent to sue from Friends of Animals and WildEarth Guardians, for

failure to issue 12-month findings on the petition. On March 2, 2010, Friends of Animals and WildEarth Guardians filed suit against the Service for failure to make timely 12-month findings within the statutory deadline of the Act on the petition to list the 14 species (*Friends of Animals, et al.* v. *Salazar*, Case No. 10 CV 00357 D.D.C.).

On July 21, 2010, a settlement agreement was approved by the Court (CV–10–357, D. DC), in which the Service agreed to submit to the **Federal Register** by July 29, 2011, September 30, 2011, and November 30, 2011, determinations as to whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no fewer than four of the petitioned species on each date. On October 11, 2011, the Service published in the **Federal Register** a proposed rule to list the yellow-billed parrot as threatened under the Act with a proposed special rule (76 FR 62740).

Summary of Comments and Recommendations

We based this action on a review of the best scientific and commercial information available, including all information received during the public comment period. In the October 11, 2011, proposed rule, we requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listing and proposed special rule. We received comments from 5 individuals, one of which was from a peer reviewer.

We reviewed all comments we received from the public and peer reviewer for substantive issues and new information regarding the proposed listing of this species, and we address those comments below. Overall, the commenters and peer reviewer supported the proposed listing. Two comments included additional information for consideration; the remaining comments simply supported the proposed listing without providing scientific or commercial data.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from one of the peer reviewers from whom we requested comments. The peer reviewer stated that the proposed rule adequately reviewed and analyzed existing information. Some new information was provided for the species, as well as technical clarifications, as described below. Technical corrections suggested by the peer reviewer have been incorporated into this final rule. In some cases, a technical correction is indicated in the citations by "personal communication" (pers. comm.), which could indicate either an email or telephone conversation; in other cases, the research citation is provided.

Peer Reviewer Comments

(1) Comment: The peer reviewer provided comments and additional literature regarding the yellow-billed parrot's habitat, diet, and nesting areas.

Our Response: We reviewed the additional literature provided and updated the *Species Description* section below.

(2) Comment: The peer reviewer provided some clarifying information regarding threats to the yellow-billed parrot from conversion of natural forests to pine plantations. According to the peer reviewer, conversion to pine plantations is no longer a threat given the current Forestry Department Management Plan.

Our Response: The 1991 literature stating that natural forests were being converted to pine plantations and other fast-growing species was based on literature from 1953, 1971, and 1981. Since 1991, Jamaica's Forestry Department prepared the National Forest Management and Conservation Plan (2001, p. ix), became an Executive Agency with better capabilities to meet the needs of the forestry sector, and prepared the Strategic Forest Management Plan (2008, p. 9). These actions emphasize Jamaica's commitment to promoting and improving the conservation and sustainable use of the country's forest resources through protection, management, and restoration of forest resources. Furthermore, clearing of natural forests for tree plantations is generally considered to be unacceptable today on grounds of conservation and risk of erosion (Camirand 2002, p. 15). Given the more recent information provided by the peer reviewer and no additional information claiming conversion to pine plantations is a threat to natural forests, we have removed this statement from our discussion of habitat modification (Factor A); however, this did not change our finding regarding the effects of habitat modification on the yellow-billed parrot or our finding that the species meets the definition of a threatened species.

(3) Comment: The peer reviewer provided clarification on the restoration of mining areas. Because the substrate is removed through open-pit mining, the area is irreversibly altered and is impossible to restore to its original state.

Our Response: We have included information on the irreversible effects of mining provided by the peer reviewer in our discussion of mining, which further supports our conclusion concerning the effects of mining on the karst region.

(4) Comment: The peer reviewer provided information on a conservation action plan that was developed for the Cockpit Country by The Nature Conservancy—Jamaica, the Forestry Department, and other stakeholders in 2006.

Our Response: Fifteen actions were developed under the conservation action plan to mitigate threats to the Cockpit Country's biodiversity. These actions would also benefit the yellow-billed parrot and its habitat. Many actions have at least been partially implemented. We added the information provided by the peer reviewer to the "Conservation Programs" section under Factor A, below, but the information did not affect our finding regarding the effects of habitat modification on the yellow-billed parrot or our finding that the species meets the definition of a threatened species.

(5) Comment: The peer reviewer provided information on a major poaching event that took place in Jamaica. In April 2011, 74 parrot eggs were smuggled out of Jamaica and confiscated in Austria. Of the 45 chicks that were successfully reared, 24 were yellow-billed parrots. The peer reviewer also provided comments on subsequent impacts to the yellow-billed parrot from additional poaching, the possible use of the confiscated birds for research and captive breeding, the potential repatriation of the parrots to Jamaica, and the risk of disease transmission to yellow-billed parrots if repatriated to Jamaica.

Our Response: We reviewed the information and comments provided by the peer reviewer. As a result of the information, we determined that international trade in Jamaican wildlife, including yellow-billed parrots, is on the rise. In light of this information, we reevaluated threats to the species from poaching for international trade and disease. Although we did find illegal international trade and the risk of disease transmission were threats to the yellow-billed parrot, this information did not change our finding that the

species meets the definition of a threatened species.

(6) Comment: The peer reviewer provided information indicating that the temporary ban on the importation of nonnative parrot species into Jamaica has been lifted and provided comments on the risk of disease transmission and hybridization to the yellow-billed parrot.

Our Response: In light of the information, we reevaluated threats to the species from disease (Factor C), hybridization (Factor E), and competition with nonnative species (Factor E). We found that the risk of disease transmission to yellow-billed parrots and the risk of hybridization or competition with nonnative parrot species are elevated given the termination of the ban on importation of nonnative parrot species into Jamaica. However, this information did not change our finding that the species meets the definition of a threatened species.

(7) Comment: The peer reviewer provided information indicating that Austria may develop a captive breeding program for the yellow-billed parrot in Europe using the yellow-billed parrots confiscated in 2011. The peer reviewer expressed concern over the avenue this could open for additional parrots to be poached in the wild and laundered through legal trade.

Our Response: We reviewed the information provided by the peer reviewer. It is unknown whether the parrots will be used for research and captive breeding purposes or if they will be repatriated to Jamaica. We have added to Factor B, below, a discussion on trade in light of a potential captive breeding program.

(8) Comment: The peer reviewer provided additional information and comments on the effects of climate change on the yellow-billed parrot.

Our Response: The information and comments provided by the peer reviewer further supported our conclusion regarding climate change, increased frequency and intensity of hurricanes, and the effects to the yellow-billed parrot. The information has been added to our discussion of hurricanes under Factor E.

Public Comments

(9) Comment: The Jamaica National Environment and Planning Agency clarified that there is no government policy statement on mining in the Cockpit Country.

Our Response: This comment is related to information we found, and included in the proposed rule, and information submitted by the peer reviewer indicating that the Jamaican Government, specifically the former Prime Minister of Jamaica, had stated that the government does not intend to allow mining in the Cockpit Country. We have added the information regarding the absence of a policy on mining in the Cockpit Country to our analysis under Factor A, below.

(10) Comment: The Jamaica National Environment and Planning Agency provided information on planned conservation actions in Cockpit Country. In 2011, it was stated that the boundary of the Cockpit Country should be determined and a management plan for the area be developed. The Jamaican Government and the Jamaica Environment Action Network were asked to work together to develop the management plan.

Our Response: These actions could potentially benefit the yellow-billed parrot and its habitat if implemented; however, to date, no decision has been made regarding the boundary of the Cockpit Country, nor has a management plan been put forward. We have added this information to the "Conservation Programs" section under Factor A, below, although the information did not influence our finding regarding the effects of habitat modification on the yellow-billed parrot or our finding that the species meets the definition of a threatened species.

(11) Comment: The Jamaica National Environment and Planning Agency provided information on requirements under Jamaica's Natural Resources Conservation (Permits and License) Regulations and requested that we include this information in our analysis. Specifically, mining, quarrying, and mineral processing require an environmental permit, but environmental permits do not automatically require an environmental impact assessment.

Our Response: We have included this information in our discussion of mining under Factor A, below, to clarify the environmental requirements of mining in Jamaica. This information, however, did not alter our finding regarding the effects of mining on the habitat of the yellow-billed parrot or our finding that the species meets the definition of a threatened species.

Summary of Changes From the Proposed Rule

We fully considered comments from the public and the peer reviewer on the proposed rule to develop this final listing of the yellow-billed parrot. This final rule incorporates changes to our proposed listing based on the comments that we received that are discussed above and newly available scientific and commercial information. We made some technical corrections and reevaluated threats to the species from disease and competition with nonnative species based on new information. Although our analysis of these potential threats is different from that in our proposed rule, none of the information changed our determination that listing this species as threatened is warranted. In addition, in this final rule, we are publishing a correcting amendment to the 2011 special rule for the salmon-crested cockatoo (76 FR 30758, May 26, 2011), as described below under the heading Correction to the Salmon-crested Cockatoo Special Rule.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR Part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

Species Description

The yellow-billed parrot belongs to the family Psittacidae and is one of only

(two *Amazona* species endemic to Jamaica (Koenig 2001, p. 205; Snyder *et al.* 2000, p. 106). It measures approximately 28 centimeters (cm) (11 inches (in)) in length. This species is generally characterized as a green parrot with white lores (between the eye and bill) and frontal bar (forehead), a blue crown, pink throat and upper breast, bluish primary feathers, and a yellow bill (BLI 2011a, unpaginated; Forshaw and Knight 2010, p. 278).

This species primarily occurs in mid-level (up to 1,200 meters (m) (3,937 feet (ft)), wet limestone and lower montane, mature forests of Jamaica; however, it also occurs at lower densities, perhaps seasonally, based on availability of food sources, in low elevation (20–100 m (65.6–328 ft)) mesic forests near the coastline (Koenig 2011, personal communication (pers. comm.); TEMNL 2005, p. 128). The late successional forest canopy height ranges from 15–20 m (49–66 ft), with occasional emergence of *Terminalia* and *Cedrela* tree species at 25–30 m (82–98 ft) (BLI 2011a, unpaginated; World Parrot Trust, 2009, unpaginated; Tole 2006, p. 790; Koenig 2001, pp. 205–206; Koenig 1999, p. 9; Wiley 1991, pp. 203–204). Undergrowth is thin, but mosses, vines, lianas, and epiphytes are abundant (Tole 2006, p. 790; Koenig 2001, p. 206). They may also be found near cultivated areas with trees at forest edge (World Parrot Trust 2009, unpaginated; Tole 2006, p. 790). Compared to the other endemic Jamaican parrot species, the black-billed parrot (*Amazona agilis*), breeding pairs of yellow-billed parrots appear to prefer interior forests, but the species regularly feeds in edge habitat (Koenig 2011, pers. comm.; Koenig 2001, pp. 207–208, 220).

In the latter part of the 20th century, the overall range and population of the yellow-billed parrot decreased (Juniper and Parr 1998 in BLI 2011a, unpaginated). The range of the yellow-billed parrot is estimated to be 5,400 square kilometers (km^2) (2,085 square miles (mi^2)) (approximately half the total area of Jamaica) (BLI 2011a, unpaginated). However, this species occurs in fragments within this range. The greatest occurrences are concentrated in extant mid-level wet igneous and limestone forests in the Blue Mountains, Cockpit Country, John Crow Mountains, and Mount Diablo (BLI 2011a, unpaginated; Koenig 2001, p. 205; Snyder *et al.* 2000, p. 106; Koenig 1999, pp. 9–10; Wiley 1991, pp. 203–204). Preliminary studies estimated 5,000 individuals in Cockpit Country, John Crow Mountains, and Mount Diablo (Snyder *et al.* 2000, p. 107). Today the yellow-billed parrot population is estimated to number 10,000 to 20,000 mature individuals, although the data quality is poor (BLI 2011a, unpaginated; World Parrot Trust, 2009, unpaginated). Cockpit Country is considered the stronghold of the species with an estimated 5,000 to 8,000 territorial pairs, at least 80 percent of the island's entire population (BLI 2011a, unpaginated; BLI 2011b, unpaginated; Koenig 2001, p. 205; Snyder *et al.* 2000, p. 107). Flocks of 50 to 60 individuals are observed year round, and this species remains common in suitable habitat (BLI 2011a, unpaginated; Snyder *et al.* 2000, p. 106; Wiley 1991, p. 204); however, the yellow-billed parrot has declined, and is declining, in numbers and range based on habitat loss and degradation and trapping (BLI 2011a, unpaginated; Snyder *et al.* 2000, p. 106; Koenig 1999, p. 9; Wiley 1991, pp. 187, 204).

Like most parrot species, the yellow-billed parrot is a frugivore, and feeds on catkins, nuts, berries, fruits, blossoms, figs, and seeds (Jamaica Observer 2011b, unpaginated; World Parrot Trust, 2009, unpaginated). Parrots, including this species, generally fly considerable distances in search of food (Koenig 2011, pers. comm.; BLI 2011a, unpaginated; Lee 2010, p. 8). Because parrots feed primarily on fruits and flowers, they are linked to the fruiting and flowering patterns of trees; fluctuations in abundance and availability of these food sources may change diets, result in movements to areas with greater food availability, and influence local seasonal patterns of bird abundance (BLI 2011a, unpaginated; Lee 2010, p. 7; Tobias and Brightsmith 2007, p. 132; Brightsmith 2006, p. 2; Renton 2002, p. 17; Cowen n.d., pp. 5, 23).

The breeding season begins in March, with yellow-billed parrots looking for and defending nest sites, and ends in late July, the end of the fledgling period (BLI 2011a, unpaginated; Koenig 2001, p. 208). Mated pairs of yellow-billed parrots appear to be monogamous (Koenig 1998, unpaginated). Yellow-billed parrots are believed to require larger, mature trees for nesting; these parrots do not excavate holes, but make use of existing ones found in old growth forests. This may explain why this species is more common, especially when nesting, in interior forests, although they have been found in other habitat types, including disturbed plantations (NEPA 2010b, unpaginated; Snyder *et al.* 2000, p. 107; Koenig 2001, p. 220). Clutch size is typically 3 eggs measuring 36.0 x 29.0 mm (1.4 x 1.1 in) (World Parrot Trust 2009, unpaginated; Koenig 2001, p. 212). *Amazona* species tend to lay one egg every other day, and the female alone incubates (Koenig 2001, p. 209). Nesting success has been low, with studies showing 70 percent of breeding pairs in Cockpit Country exploring and defending nest sites, but failing to lay eggs (Snyder *et al.* 2000, p. 107). Outside of the breeding season, yellow-billed parrots have been seen in large communal roosts (World Parrot Trust 2009, unpaginated).

Conservation Status

The yellow-billed parrot is currently classified as "vulnerable," which means this species is facing a high risk of extinction in the wild, by the International Union for Conservation of Nature due to the small, fragmented, and declining range of this species; a decline in extent, area, and quality of suitable habitat due to logging and mining; and trapping (BLI 2011a, unpaginated; Snyder *et al.* 2000, p. 106). This species is also listed in Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendix II, which includes species that although not necessarily now threatened with extinction may become so unless trade is strictly regulated. The yellow-billed parrot is also listed under the Second Schedule of Jamaica's Endangered Species (Protection, Conservation and Regulation of Trade) Act.

A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Historically, 97 percent of Jamaica was a closed-forest ecosystem. After centuries of improper land use and a high rate of deforestation, the island has lost much of its original forest (Berglund and Johansson 2004, pp. 2, 5; Evelyn and Camirand 2003, p. 354; Koenig 2001, p. 206; Koenig 1999, p. 9). Some of the most important parrot habitat was protected from human activities by its inaccessibility, but today, even these areas are being encroached upon and degraded. Conversion of forest land to agriculture and pasture has accounted for a majority of deforested land and has resulted in the removal of valuable timber species as a byproduct, with natural regrowth removed as soon as it approaches marketable size (Eyre 1987, p. 342).

Today, Jamaica's forested area is estimated at 337,000 hectares (ha) (832,745 acres (ac)), or 31 percent of the total land area (FAO 2011, p. 116). Only 8 percent of Jamaica's total land area is classified as minimally disturbed closed broadleaf forest, and this type of forest only occurs on the steepest or most remote, inaccessible parts of the island (Koenig 2011, pers. comm.; Levy and Koenig 2009, p. 262; Evelyn and

Camirand 2003, p. 359; National Forest Management and Conservation Plan 2001, pp. ix, 20; WWF 2001, unpaginated; Koenig 1991, p. 9). This loss in forested habitat has resulted in a small and fragmented range for the yellow-billed parrot; a decline in the extent, area, and quality of suitable habitat; and a decline in the yellow-billed parrot population (BLI 2011a, unpaginated; World Parrot Trust 2009, unpaginated; Koenig 1999, p. 9). The greatest long-term threats to Jamaica's remaining population of the yellow-billed parrot is deforestation via logging, agriculture, mining, road construction, and encroachment of nonnative species (BLI 2011a, unpaginated; NEPA 2010b, unpaginated; Levy and Koenig 2009, pp. 263–264; World Parrot Trust 2009, unpaginated; JEAN 2007, p. 4; John and Newman 2006, pp. 7, 15; Tole 2006, p. 799; Snyder *et al.* 2000, p. 106; Koenig 1999, p. 10; Varty 1991, pp. 135, 145; Wiley 1991, p. 190; Windsor Research Center n.d., unpaginated).

Cockpit Country is characterized by yellow and white limestone karst topography with rounded peaks and steep-sided, bowl-shaped depressions, known as cockpits (John and Newman 2006, p. 3; Tole 2006, p. 789). Historically, the edge forests of Cockpit Country experienced extensive clear-cutting for timber, but the rugged terrain and inaccessibility of Cockpit Country have prevented extensive resource exploitation in its interior forests (Koenig 2001, pp. 206–207; Wiley 1991, p. 201). This area has retained nearly all of its primary forest and is an important remaining tract of extensive primary forest in Jamaica; 81 percent of the region is under forest (John and Newman 2006, p. 3; Tole 2006, pp. 790, 795, 798). However, gaps indicate the beginning of a decline in contiguity and connectivity, and the periphery and surrounding plains are already badly degraded (Tole 2006, pp. 790, 797; Koenig 2001, pp. 201–207). The greatest threat to the wet limestone forest habitat of Cockpit Country is deforestation due to bauxite mining. Additional threats include deforestation from road construction, conversion of forests for agriculture, poor agricultural practices, and logging (BLI 2011b, unpaginated; Levy and Koenig 2009, p. 267; JEAN 2007, p. 4; BLI 2006, unpaginated; John and Newman 2006, p. 15; Wiley 1991, p. 201; Windsor Research Centre n.d., unpaginated).

The Blue Mountains and John Crow Mountains are located on the eastern side of Jamaica and are separated by the Rio Grande. Almost all of the two ranges were designated forest reserves and contain important remaining tracts of closed-canopy, broadleaf forest (TNC 2008b, unpaginated). In 1989, 78,200 ha (193,236 ac) were designated as the Blue and John Crow Mountains National Park (BLI 2011d, unpaginated; BLI 2011e, unpaginated; Dunkley and Barrett 2001, p. 1). The most significant threats to the Blue and John Crow Mountains are deforestation due to subsistence farming, commercial farming, and illegal logging, and the encroachment of invasive species (BLI 2011e, unpaginated; IUCN 2011, unpaginated; Chai *et al.* 2009, p. 2489; Dunkley and Barrett 2001, p. 2; WWF 2001, unpaginated; TNC 2008b, unpaginated).

Mount Diablo is located in the center of Jamaica and makes up part of the "spinal forest," the forests along the main mountain ridges that extend along the center of the island. Conversion of forest for agriculture land, forestry plantations, expanding settlements, and bauxite mining has left the spinal forest severely fragmented (BLI 2011c, unpaginated).

Logging and Agriculture

In the Cockpit Country Conservation Action Plan, threats to the limestone forests from conversion of forest, incompatible agriculture practices, and timber extraction are ranked high (John and Newman 2006, p. 15). The immediate vicinity of Cockpit Country has a population of around 10,000 people who exploit the area (Day 2004, p. 34). Illegal logging and farming have extended into the forest reserve within Cockpit Country (Day 2004, p. 34; Chenoweth *et al.* 2001, p. 651). Loggers, legal and illegal, are removing unsustainable amounts of trees for furniture factories and other industries (TNC 2008a, unpaginated). Illegal logging opens new pathways into the forest for squatters who usually clear a patch for growing food, then move on after one season to clear additional land (Tole 2006, p. 799). Farmers remove natural forests from cockpits, glades, and other accessible areas to plant yam, corn, dasheen, banana, plantain, and sugar cane, and to graze cattle and goats (TNC 2008a, unpaginated; Day 2004, p. 35; Chenoweth *et al.* 2001, p. 652).

One of the greatest causes of deforestation and fragmentation in Cockpit Country is the illegal removal of wood for yam crops and yam sticks (JEAN 2007, p. 4; Tole 2006, p. 790; Chenoweth *et al.* 2001, p. 653). Farmers clear hillsides to plant yam crops, reducing forest cover and nesting trees. Yam plants require a support stake that is typically a sapling approximately 8–10 cm (3–4 in) in diameter. With suitable trees dwindling elsewhere, Cockpit Country is quickly becoming a source of supply. Forty percent of the total demand for yam sticks is supplied by Cockpit Country; this translates to 5 to 9 million saplings harvested annually from Cockpit Country alone (Tole 2006, pp. 790, 799). Yam stick harvesting is ranked as a medium threat to the limestone forests of Cockpit Country (John and Newman 2006, p. 15).

Adjacent to the Blue and John Crow Mountains National Park are isolated communities that rely on the park's resources for various economic activities; with almost unchecked access to the park, encroachment of these communities across the park boundary is cause for concern (IUCN 2011, unpaginated; Dunkley and Barrett 2001, pp. 2–3). Much of the area has been altered from its natural state and is used for forestry, coffee production, or subsistence farming (BLI 2011d, unpaginated). The adjacent communities have a tradition of small farming, and, despite the steep slopes, hillsides are cleared and used by small subsistence farmers for carrots, peas, bananas, plantains, coconuts, pineapples, apples, cabbages, and tomatoes; coffee is also grown by small and large farmers for the well-known brand Blue Mountain Coffee (Dunkley and Barrett 2001, pp. 1, 3). Farmers use slash-and-burn techniques to clear forests for agricultural land; however, because of poor agricultural practices, the soil quality begins to deteriorate after one or two seasons, and farmers abandon their plots and clear additional land for new crops (Chai *et al.* 2009, p. 2489; TNC 2008b, unpaginated).

The human population surrounding Mount Diablo is steadily growing. Native vegetation is removed for housing, crop cultivation, and lumber. In this area, farming is the main livelihood after bauxite mining. Slash-and-burn practices are used on hillsides to clear land for cash crops, such as banana, plantain, yam, cabbage, okra, pepper, and tomato. Various tree species are cut for lumber and add to the deforestation and poor condition of the soils (Global Environmental Facility, Small Grants Programme (GEF SGP) 2006, unpaginated). Native forests are also removed for forestry plantations, including pine *(Pinus caribaea)*, blue mahoe *(Hibiscus elatus)*, bigleaf mahogany *(Swietenia macrophylla)*, and cedar *(Cedrela odorata)*. These activities have left the mountain without any native vegetation and the central spinal forest severely fragmented.

Bauxite Mining

Bauxite is the raw material used to make aluminum and is Jamaica's principle export, accounting for over

half of Jamaica's annual exports. Bauxite deposits occur in pockets of limestone and can be found under 25 percent of the island's surface (BLI 2006, unpaginated). It is removed through open pit mining (soil is removed, stored, and then replaced following completion of the mine) and is considered the most significant cause of deforestation in Jamaica (Berglund and Johansson 2004, p. 2). Bauxite mining is driving habitat destruction across the center of the island, including Mount Diablo, and has the potential to permanently destroy forests, including the wet limestone habitat found in Cockpit Country, resulting in irreversible effects on the yellow-billed parrot (Levy and Koenig 2009, p. 267; BLI 2006, unpaginated; John and Newman 2006, p. 7; Berglund and Johansson 2004, p. 6; Wiley 1991, p. 201; Windsor Research Centre n.d., unpaginated).

Within the past 50 years, bauxite mining has severely fragmented the spinal forests of Jamaica (BLI 2011c, unpaginated). In the past 40 years, Mount Diablo has been subjected to bauxite mining, which has destroyed much of the area beyond repair and is presumed to have contributed to the decline of populations of forest-dependent species, such as the yellow-billed parrot (BLI 2008, unpaginated; Koenig 2008, p. 145; Varty 2007, pp. 34, 93). In 2009, several bauxite/alumina mining companies closed their refineries due to a drop in demand; however, in July 2010, an alumina plant in Ewarton, a town located at the foot of Mount Diablo, reopened due to a return in demand. Where mining has occurred, it has resulted in severe impacts to the environment. For example, mining sites within Mount Diablo that were completed 10–15 years ago typically have only herbaceous groundcover, including nonnative ferns, and no regeneration of native woody tree species (BLI 2011c, unpaginated).

Bauxite mining is currently the most significant threat to Cockpit Country. It is ranked high in threats to the limestone forests in Cockpit Country (John and Newman 2006, p. 15). Bauxite deposits can be found throughout 70 percent of Cockpit Country, and mining companies have already drilled for bauxite samples (BLI 2006, unpaginated; John and Newman 2006, p. 7; Walker 2006, unpaginated; Windsor Research Centre, n.d., unpaginated). In 2006, ALCOA Minerals of Jamaica and Clarendon Alumina Production were granted a renewal on two bauxite prospecting licenses, which encompassed more than 60 percent of the Cockpit Country Conservation Area and more than 42,000 ha (103,784 ac) of nearly contiguous primary forest. After public outcry, these licenses were suspended. In 2007, the former Prime Minister of Jamaica, Bruce Golding, declared that the government will not allow any mining activity in the Cockpit Country (Koenig 2011, pers. comm.). However, there is no official policy by the Government of Jamaica on mining in the Cockpit Country (Strong 2011, pers. comm.), and the area continues to be described by officials and ministers as an area of high-quality bauxite and limestone deposits. Thus, the area remains open to future prospecting, and mining interests are granted over other land uses, such as timber, agriculture, and conservation (Koenig 2011, pers. comm.; Koenig 2008, pp. 135–137; TNC 2008a, unpaginated; JEAN 2007, p. 4; Walker 2006, unpaginated).

Few lands are excluded from mining or prospecting under Jamaica's Mining Act, including 22,000 ha (54,363 ac) of Cockpit Country designated as forest reserves, which could be subject to prospecting or mining if a license or lease is obtained (JEAN 2007, p. 6). Additionally, in some, if not all, mining agreements, the Jamaican Government provides mining companies with entitlements to specific amounts of bauxite and guarantees them additional land for mining if the original land does not contain sufficient levels, further contributing to deforestation (JEAN 2007, p. 8). Although bauxite extraction is not currently occurring in Cockpit Country, mining remains a significant impending threat to the area. The amount of deposits found throughout the area, and the fact that the area remains open to future prospecting and that bauxite is Jamaica's principle export, leaves open the possibility that mining may occur in the future (JEAN 2007, p. 4; Windsor Research Centre n.d., unpaginated).

If mining were to occur in Cockpit Country, the impacts to the wet limestone forest habitat and wildlife would be irreversible (Varty 2007, p. 93; Windsor Research Centre n.d., unpaginated). During the prospecting phase, a company or individual is required to obtain a prospecting right from the Jamaican Government; however, this does not require an environmental permit, which requires an environmental impact assessment be conducted before being granted (Jamaica Ministry of Energy and Mining 2006a, unpaginated). Forests are cleared during this phase using heavy machinery to create roads for transporting drilling equipment. Once the area of interest has been identified and the existence of a commercially exploitable mineral exists, a mining lease must be obtained to mine and sell the product. Mining, quarrying, and mineral processing require an environmental permit under Jamaica's natural resources conservation (permits and license) regulations; however, an environmental impact assessment is not an automatic requirement during this phase either (Strong 2011, pers. comm.). Additionally, one of the problems with conservation in Jamaica is incomplete and improper environmental impact assessments when they are required (Levy and Koenig 2009, p. 263). The mining phase requires a more extensive road network, and all the vegetation covering bauxite deposits are removed. Mining in a karst region can lead to altered flow regimes and changes in drainage patterns, and can reduce the soil's water retention capability, making it impossible to restore the area to its original state (JEAN 2007, pp. 4–5; Berglund and Johansson 2004, p. 6). After mining is completed, companies are required to restore lands destroyed by mining. However, a typical restored site consists of a thin layer of topsoil bulldozed over densely packed limestone gravel and planted with nonnative grasses, preventing the regeneration of native forests (Koenig 2008, p. 141; BLI 2006, unpaginated). Penalties for failing to meet the reclamation requirements are often not enforced (BLI 2006, unpaginated).

Bauxite mining has been shown to significantly impact native species and their habitats. The forests of Mount Diablo have already suffered significant damage from bauxite mining, leading to the conclusion that mining cannot be allowed in Cockpit Country or it would destroy the area beyond repair (Varty 2007, p. 93). Because of the potential damage to the nesting environment, bauxite mining could drive the yellow-billed parrot population to critically low levels and potentially put it at risk of extinction (Koenig 2008, p. 147).

Roads

Access roads associated with bauxite mining are another significant cause of deforestation and a serious threat to the forest cover of Jamaica. Once established, either in the prospecting or mining phase, loggers use mining roads to gain access to additional forests and illegally remove trees in and around the mining area (BLI 2011a, unpaginated; JEAN 2007, pp. 4–5; Berglund and Johansson 2004, p. 6). If mining were to occur in Cockpit Country, roads established to access the cockpit bottoms would fragment the habitat, isolate forested hillsides, and increase the amount of edge habitat (Koenig 2008, pp. 141, 144). Improved human access via mining roads and the

subsequent alteration in habitat and predator-prey dynamics (see Factor C discussion, below) are predicted to hasten the decline of the yellow-billed parrot.

In addition to mining access roads, road construction and extensive trail systems have the potential to contribute to further deforestation or alter environmental conditions. Roads provide access to previously undisturbed forests. In Cockpit Country, forest clearance has occurred along the edge where roads have provided easy access (JEAN 2007, p. 4). Interior forests were once inaccessible; however, continued road construction into these areas will lead to increased deforestation and logging (WWF 2001, unpaginated). Construction of Highway 2000 along the southern boundary of Cockpit Country may threaten the area through subsequent logging and the need for limestone fill, which could be quarried from Cockpit Country (Day 2004, p. 35; Windsor Research Centre no date, unpaginated). Roads and trails are ranked high in threats to the limestone forest of Cockpit Country (John and Newman 2006, p. 15). Additionally, roads and trails create openings in the forest, exposing it to new environmental conditions that alter the high-humidity conditions in which species of wet limestone habitat are adapted and that facilitates the spread of invasive species (JEAN 2007, p. 4; Windsor Research Centre no date, unpaginated).

Nonnative Species

Forest clearance, whether through mining, road/trail development, logging, or agriculture, not only reduces the size of continuous forests and opens them up to further deforestation, it also alters the natural environment and facilitates the spread of harmful nonnative plants and animals (JEAN 2007, p. 4; Windsor Research Centre n.d., unpaginated). Nonnative, invasive plant species have the ability to outcompete and dominate native plant communities and are ranked high in threats to the limestone forests of Cockpit Country (John and Newman, 2006, p. 15). The many years of land clearance experienced by the Blue and John Crow Mountains National Park has led to the expansion of invasive species, including wild coffee (*Pittosporum undulatum*) and ginger lily (*Hydicum spicatum*), which are invading and quickly spreading in closed-canopy forests (BLI 2011d, unpaginated; TNC 2008b, unpaginated; JEAN 2007, p. 4; Windsor Research Centre no date, unpaginated). Nonnative species prevent the regeneration of native forests so that rare, late-successional species typical of old growth forests are replaced by common secondary species or nonnative species (Chai *et al.* 2009, p. 2490; Koenig 2008, p. 142; TNC 2008b, unpaginated).

Impacts of Deforestation

Deforestation through mining, road construction, logging, and agriculture contributes to the loss of Jamaica's remaining primary forest, habitat for the yellow-billed parrot, and essential resources for the life functions of the yellow-billed parrot. The removal of trees reduces food sources, shelter from inclement weather, and most importantly, nesting sites, which are reported to be limited (NEPA 2010b, unpaginated; Tole 2006, pp. 790–791; Koenig 2001, p. 206; Koenig 1999, p. 10; Wiley 1991, p. 190). The removal of saplings for yam sticks eliminates the source of regeneration for mature trees in which nesting cavities will form. Deforestation also changes the quality of remaining resources (Koenig 2001, p. 206; Koenig 1999, p. 10) and prevents the regeneration of native forests. The agricultural practices of farmers leave the land unfertile and unstable, especially on hillsides. Cash crops do not have a sufficient root system to hold soil, and the loss of the forest canopy leaves the soil vulnerable to impacts from rainfall, resulting in massive soil erosion (GEF SGP 2006, unpaginated). This decrease in the quality of the land prevents native forests from regenerating (Dunkley and Barrett 2001, p. 2; WWF 2001, unpaginated). Furthermore, deforestation also allows human disturbance to extend farther into the interior of the forest, contributing to further deforestation, altering the habitat, and affecting the predator/prey balance (see Factor C discussion, below) (Tole 2006, pp. 790–791; Koenig 1999, pp. 11–12). Threats to the limestone forest of Cockpit Country overall are considered very high (John and Newman 2006, p. 15).

Deforestation can also change the species composition and structure of a forest, rendering it unsuitable for the yellow-billed parrot. Openings in the forest expose the forest edge to new environmental conditions, such as increased sunlight and airflow, altering the microclimate from the highly humid conditions of the interior forest, to which species such as the yellow-billed parrot are adapted (JEAN 2007, p. 4; Tole 2006, p. 798; Windsor Research Centre no date, unpaginated). The new environmental conditions facilitate the establishment of nonnative species and prevent the regeneration of native forests; rare, late-successional species typical of old growth forests are replaced by common secondary species or nonnative species (Chai *et al.* 2009, p. 2490; Koenig 2008, p. 142; TNC 2008b, unpaginated). This resulting "edge habitat" can exert a strong effect on species; birds have been shown to be affected from 50 m (164 ft) to 250 m (820 ft) from the cleared edges (Chai *et al.* 2009, p. 2489). Studies on the black-billed parrot found that Jamaican boa's (*Epicrates subflavus*) abundance and accessibility of parrot nests to boas were higher in forest edge than in the interior (see Factor C discussion, below) (Koenig *et al.* 2007, p. 87). Only 26 percent of black-billed parrot nests located in regenerating edge habitat successfully fledged at least one chick, whereas 60 percent of nests in moderately disturbed interior forests successfully fledged at least one nestling (Koenig *et al.* 2007, p. 86). Of 35 nests that failed, 50 percent experienced predation in regenerating edge, compared to none in the interior forest (Koenig *et al.* 2007, p. 86). Fecundity was found to decline in edge habitat; it was more than 60 percent lower than that of the interior, a level inadequate for population persistence (Koenig 2008, pp. 143, 145; Koenig *et al.* 2007, p. 86).

Conservation Programs

Conservation International, Southern Trelawny Environmental Agency, the Windsor Research Centre, and Jamaica's Forestry Department are working together to produce a long-term protection strategy for Cockpit Country. Part of the strategy involves the use of plastic yam sticks, incentive programs to encourage farmers to set aside 40 ha (99 ac) of forest as a reserve, training members of the community as enforcement officers, and restoring abandoned land with native species (Tole 2006, p. 800). We do not know the status of this program or what goals have been achieved.

A conservation action plan (CAP) was developed for Cockpit Country/Martha Brae Watershed by The Nature Conservancy-Jamaica, Jamaica's Forestry Department, and other stakeholders in 2006. The CAP is based on the Martha Brae Watershed Unit, with the southern boundary extended to include sections of the Cockpit Country Forest Reserve that fall outside of the management unit. Fifteen actions were developed to mitigate threats to the Cockpit Country's biodiversity, which will also benefit the yellow-billed parrot and its habitat. Many actions have been at least partially implemented. Three local forest management communities have been created around Cockpit Country, and bi-monthly meetings are held for environmental outreach and to engage communities in identifying alternative

income-generating projects. Some forest restoration has been implemented, with a focus on using native tree species. An economic valuation of Cockpit Country was to be completed by the end of 2011. This valuation, when completed, will be widely distributed so that policy-makers, communities, nongovernmental organizations, and the wider public may become aware of the fact that damaging or destroying ecosystems and cultural services has a financial cost to present and future generations (Koenig 2011, pers. comm.). We did not find information indicating this action has been completed.

In October 2011, the Jamaican government, along with the Jamaica Environment Action Network, were asked to work together to determine the boundary of the Cockpit Country and develop a management plan for the area. To date, no decision has been made on the boundary, nor has a management plan been put forward (Strong 2011, pers. comm.).

Within the Blue and John Crow Mountains National Park, there are programs aimed at controlling nonnative species. Parks in Peril and the Jamaica Conservation and Development Trust established a nursery as a forest restoration project; timber and fruit trees are distributed to adjacent communities for planting (TNC 2008b, unpaginated). The success of this program is unknown.

Summary of Factor A

The yellow-billed parrot is restricted to the island of Jamaica. Past deforestation has resulted in a small and fragmented range on the island, a decline in the extent and quality of suitable habitat, and a declining yellow-billed parrot population. The remaining populations of yellow-billed parrot continue to face impacts to their habitat from deforestation. Mining, road and trail construction, logging, agriculture, and encroachment of nonnative species remove natural forests and have irreversible effects that prevent the regeneration of native vegetation so that late-successional species typical of old growth forests are replaced by common secondary species or nonnative species. Removal of these forests without adequate regeneration permanently eliminates shelter and trees vital for foraging and nesting activities. Without these essential resources, the populations of the yellow-billed parrot will likely continue to decline. Additionally, deforestation fragments the remaining habitat and can increase the amount of edge habitat, altering predator-prey dynamics (see Factor C discussion, below). Increases in edge habitat can decrease the fecundity and recruitment of the yellow-billed parrot, accelerating the decline of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Harvesting of parrot chicks for pets has seriously affected most of the parrot species in the West Indies (Wiley 1991, p. 191). In Jamaica, illegal poaching for the pet trade and farmers who shoot them to protect their crops have contributed to the decline of the yellow-billed parrot (BLI 2011a, unpaginated; Sylvester 2011, unpaginated; Jamaica Observer 2011b, unpaginated; Koenig 2008, p. 145; JEAN 2007, p. 4; Snyder *et al.* 2000, p. 107; Windsor Research Center n.d., unpaginated).

In 1981, the yellow-billed parrot was listed in Appendix II of CITES. CITES is an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species (also see discussion under Factor D, below). Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party (CITES 2010a, unpaginated).

For species listed in Appendix II of CITES, commercial trade is allowed. However, CITES requires that before an export of Appendix-II specimens can occur, a determination must be made that the specimens were legally obtained (in accordance with national laws) and that the export will not be detrimental to the survival of the species in the wild, and a CITES export document must be issued by the designated CITES Management Authority of the country of export and must accompany the export of the specimens.

According to worldwide trade data obtained from UNEP–WCMC CITES Trade Database, from 1981, when the species was listed in CITES, through 2009, 210 yellow-billed parrot specimens were reported in international trade, including 208 live birds, 1 scientific specimen, and 1 body. In analyzing these reported data, several records appear to be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade, and it is likely that the actual number of specimens of yellow-billed parrots reported to UNEP–WCMC in international trade from 1981 through 2009 was 195, including 193 live birds, 1 scientific specimen, and 1 body. Of these specimens, 11 (5.6 percent) were reportedly exported from Jamaica (UNEP–WCMC 2011, unpaginated). With the information given in the UNEP–WCMC database, from 1981 through 2009, only 1 wild specimen of yellow-billed parrot was reported in trade, and this was a nonliving body traded for scientific purposes. One live specimen with the source recorded as unknown was also reported in trade. All other specimens reported in trade were captive-bred or captive-born specimens.

The majority of the specimens of this species reported in international trade (99 percent) are captive-bred or captive-born. Although it is possible that wild parrots could have been taken to establish parental stock for captive breeding or laundered as captive-bred or captive-born specimens, we found no information indicating this is occurring. Furthermore, because the species is listed in Appendix II of CITES, the Management Authority of the Country of Export is required to ensure that the specimens were legally obtained, the export will not be detrimental to the survival of the species in the wild, and issue a CITES export document. The one wild specimen reported in trade was a scientific specimen traded for scientific purposes. Therefore, we believe that international trade controlled via valid CITES permits is not a threat to the species.

Until 2011, most yellow-billed parrot nestlings were poached for the local market and were not highly desirable in the international pet trade (Koenig 2011, pers. comm.; Koenig 2001, p. 206). They are popular on Jamaica as pets because of their colorful plumage and ability to mimic human sounds; the yellow-billed parrot appears to be in higher demand than black-billed parrots because of their brighter coloration (Snyder *et al.* 2000, p. 107; Windsor Research Center n.d., unpaginated). Most poaching operations are small-scale, although larger-scale operations exist (Sylvester 2011, unpaginated). Poachers may use sticks baited with fruit and covered in glue to trap birds (Sylvester 2011, unpaginated). Additionally, poachers will cut down nesting trees to obtain nestlings (BLI 2011a, unpaginated; NEPA 2010b, unpaginated; Koenig 2008, p. 145). In March 2010, Jamaica's National Environment and Planning Agency, the government agency responsible for protecting natural resources, published a news release reminding residents that it is illegal to

buy and/or sell Jamaican parrots locally or trade in them internationally (NEPA 2010b, unpaginated). In Cockpit Country, threats to the yellow-billed parrot from collection are ranked as medium (John and Newman 2006, p. 15). However, Jamaica's National Environment and Planning Agency has recently admitted to receiving intelligence regarding a growth in illegal trade of Jamaican wildlife and has noticed an increase in the illegal importation of monkeys, birds, and snakes into the country (Neufville 2012, unpaginated; NEPA 2010a, p. 1). Jamaica is now believed to be a trans-shipment point for illegal trade in animals from Central and South America (NEPA 2010a, p. 1).

As reported by several media outlets, in April 2011, 74 parrot eggs were smuggled out of Jamaica, but were detected at the Eisenstadt Airport in Vienna, Austria. The eggs were confiscated, and falsified documents claiming the parrots were of European origins were found. The seizure was the highest number of smuggled bird eggs in the history of the European Union. The eggs were taken to Vienna's Schönbrunn Zoo, where staff successfully hatched 54 of the 74 eggs. Nine chicks died, but 45 were reared successfully. Of the 45, 24 were yellow-billed parrots. On the international black market, the price for individual parrots range from $5,300 to $20,000 U.S. dollars (Neufville 2012, unpaginated; Ferguson 2011, unpaginated; Koenig 2011, pers. comm.; Stefan 2011, pp. 16–17; Vilikovská 2011, unpaginated).

Jamaica's National Environment and Planning Agency issued a press release in 2011 stating that steps were being taken to request the return of the endemic Jamaican parrots smuggled out of Jamaica in 2011 (Jamaica Observer 2011a, unpaginated). If they are not returned to Jamaica, the Schönbrunn Zoo plans to keep some of the parrots, while giving others to scientific zoos for research purposes. They also plan to develop a captive breeding program for these birds in Europe (Ferguson 2011, unpaginated; Koenig 2011, pers. comm.). We do not know if the purpose of the captive breeding program has been clarified, but if a breeding program is established in Europe without strict controls put in place, it could open an avenue for additional illegally exported birds to be laundered through legal trade (Koenig 2011, pers. comm.). If captive breeding is successful enough to produce enough birds to meet some, but not all, of the commercial demand, legal trade could mask the illegal trade. However, we do note that if a captive breeding program is highly successful such that it meets all of the commercial demand, it could preclude the need for wild-caught birds.

Poaching for use as caged birds places a strong pressure on the population of yellow-billed parrots and is a documented cause of nest failures and reduces the number of parrots in the wild (BLI 2011a, unpaginated; Snyder *et al.* 2000, p. 106). The cutting of trees to obtain parrots destroys nest cavities and reduces the number of available nesting sites for future generations. This has a significant negative impact on the yellow-billed parrot, as this species does not excavate its own holes for nesting but relies on existing holes that often form in old-growth trees (BLI 2011a, unpaginated; Sylvester 2011, unpaginated; NEPA 2010b, unpaginated; Wiley 1991, p. 191). Mining access roads create accessibility to forests, and illegal timber extraction in bauxite mining areas facilitates the poaching of both nestlings and adults, and exacerbates the effects of poaching on nest failures (BLI 2011a, unpaginated; Koenig 2008, p. 136). Although we do not have detailed information on the numbers of yellow-billed parrots taken for the pet trade, when combined with habitat loss from deforestation, the impact to the survival of this species is severe (Sylvester 2011, unpaginated).

As described under Factor A, parrot habitat is threatened by the conversion of forests to agriculture. As agriculture spreads into parrot habitat, farmers and birds come into conflict over crops (Wiley 1991, p. 191). Some persecution for crop and garden damage, especially citrus, has been reported for the yellow-billed parrot (Snyder *et al.* 2000, p. 107).

Summary of Factor B

Since the CITES Appendix-II listing of the yellow-billed parrot, its legal international commercial trade has been very limited. However, the species appears to be popular in Jamaica's domestic market and has recently been documented in the international black market, contributing to the decline of the species. In addition to removing individuals from the wild population, poachers cut trees to trap nestlings, removing limited essential nesting cavities and reducing the availability of nesting cavities for future generations. Ongoing deforestation in Jamaica may increase the likelihood of birds and farmers coming into conflict and yellow-billed parrots being killed to protect crops. Combined with the ongoing deforestation in Jamaica, the removal of individuals from the population and the further loss of nesting trees due to poaching activities are significant concerns to the survival of this species.

C. Disease or predation

Disease

Nonnative psittacines imported for the pet trade pose a high threat to the yellow-billed parrot through the introduction of disease, the potential for hybridization, and competitive exclusion of nesting activities (see also Factor E discussion, below) (Koenig 2009, p. 2; Levy and Koenig 2009, p. 264; Wiley 1991, p. 191). In 2006, a temporary ban on importation of nonnative parrot species was put in place based on concerns for the introduction of highly pathogenic strains of avian influenza (Koenig 2009, p. 3; Levy and Koenig 2009, p. 264). At that time, threats from introduced diseases in Cockpit Country were ranked low (John and Newman 2006, p. 15).

Currently, the ban on importation of nonnative parrot species is no longer in effect (Koenig 2011, pers. comm.), leaving the yellow-billed parrot vulnerable to disease transmission from escaped nonnative psittacines imported for the pet industry (Koenig 2009, p. 1). A wide variety of psittacines, including budgerigars (*Melopsittacus undulatus*), cockatiels (*Nymphicus hollandicus*), and various species of lovebirds (*Agapornis* spp.) have been legally imported and likely smuggled illegally into Jamaica. Several species of parrots are known to have escaped their cages and have been observed in urban areas (Koenig 2009, pp. 1–2). The movement of psittacines and other bird species for the pet trade has facilitated the spread of many diseases. Asymptomatic hosts with more developed immune systems can shed viruses and bacteria that can be highly lethal for species that have not encountered those microorganisms; island species are particularly vulnerable due to their isolation (Koenig 2009, p. 2).

Diseases that are of particular concern for psittacines include avian influenza, psittacine beak and feather disease, polyomavirus, Pacheco's disease, avian tuberculosis, and proventricular dilatation disease (Koenig 2009, pp. 2–3).

Avian influenza is an infection caused by flu viruses, which occur in birds worldwide, especially waterfowl and shorebirds. Most strains of the avian influenza virus have low pathogenicity and cause few clinical signs in infected birds, but are highly contagious among birds (CDC 2010, 2005, unpaginated). Pathogenicity is the ability of a pathogen to produce an infections

disease in an organism. However, strains can mutate into highly pathogenic forms, which is what happened in 1997, when the highly pathogenic avian influenza virus (called H5N1) first appeared in Hong Kong (USDA *et al.* 2006, pp. 1–2). Signs of low pathogenic avian influenza include decreased food consumption, coughing and sneezing, and decreased egg production. Birds infected with highly pathogenic influenza may exhibit these same symptoms plus a lack of energy, soft-shelled eggs, swelling, purple discoloration, nasal discharge, lack of coordination, diarrhea, or sudden death (USDA 2007, unpaginated). Most of the information regarding avian influenza is on domesticated bird species, especially poultry. We do not have information on the extent that introduced parrot species and the spread of avian influenza have impacted the yellow-billed parrot.

Psittacine beak and feather disease (PBFD) is a common viral disease that has been documented in more than 60 psittacine species, but all psittacines should be regarded as potentially susceptible (Rahaus *et al.* 2008, p. 53; Abramson *et al.* 1995, p. 296). The causative agent is a virus belonging to the genus *Circovirus* (Koenig 2009, p. 2; Rahaus *et al.* 2008, p. 53). This viral disease affects both wild and captive birds, causing chronic infections resulting in either feather loss or deformities of the beak and feathers (Koenig 2009, p. 2; Rahaus *et al.* 2008, p. 53; Cameron 2007, p. 82). PBFD causes immunodeficiency and affects organs such as the liver and brain, and the immune system. Suppression of the immune system can result in secondary infections due to other viruses, bacteria, or fungi. The disease can be carried by psittacines, such as cockatiels, lovebirds, and budgerigars, without obvious signs (Koenig 2009, p. 2; de Kloet and de Kloet 2004, p. 2,394). Birds usually become infected in the nest by ingesting or inhaling viral particles. Infected birds develop immunity, die within a couple of weeks, or become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82).

Avian polyomavirus (APV) is one of the most significant viral pathogens of caged birds (Pesaro *et al.* 2005, p. 321). This virus is lethal to juvenile parrots and can be carried asymptomatically by cockatiels and budgerigars (Koenig 2009, p. 2). The mortality peak in some Psittacine species occurs between 4 and 8 weeks of age (Pesaro *et al.* 2005 pp. 321, 325). Most birds infected with APV are mildly affected (Gonzalez *et al.* n. d., p. 2).

Pacheco's parrot disease is a systemic disease caused by a psittacid herpesvirus (PsHV–1) (Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, pp. 808, 811). It is an acute, rapidly fatal disease of parrots, and sudden death is sometimes the only sign of the disease; however, in some cases, birds may show symptoms and may recover to become carriers, shedding the virus in its droppings, and some may show no signs of the disease, but shed the active virus for a considerable length of time (Koenig 2009, pp. 2–3; Tomaszewski *et al.* 2006, p. 536; Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, p. 811). If clinical signs of Pacheco's disease are exhibited, they may include anorexia, depression, regurgitation, diarrhea, nasal discharge, central nervous system signs, and conjunctivitis (Abramson *et al.* 1995, p. 293; Panigrahy and Grumbles 1984, pp. 809–810). Death may occur 8 hours to 6 days after the onset of signs (Panigrahy and Grumbles 1984, p. 810). The outcome of the infection depends upon which of the four genotypes of PsHV–1 the individual is infected with, the species infected, and other unknown factors. For example, only genotype 4 is known to cause mortality in macaws (Tomaszewski *et al.* 2006, p. 536). Outbreaks of Pacheco's disease have resulted in massive die-offs of captive parrots, and this disease is known to have caused high mortality in endangered species of parrots in the United States (Tomaszewski *et al.* 2006, p. 536; Panigrahy and Grumbles 1984, p. 808).

Avian tuberculosis (also known as avian mycobacteriosis) is caused by the bacillus bacteria *Mycobacterium avium* and is rapidly spread by fecal contaminations of perches, feed, or water sources and can remain viable in soil for years (Koenig 2009, p. 3; USGS 1999, p. 96; Butcher *et al.* 1990, p. 1025; Rosskopf *et al.* 1986, p. 219; Panigrahy *et al.* 1983, p. 1166). There are 20 types of *M. avium*. This disease causes chronic wasting characterized by weight loss, diarrhea, difficulty breathing, and tumors of the skin and eyes (Butcher *et al.* 1990, p. 1023; USGS 1999, Chapter 8, pp. 93–97). Tumors may also affect the spleen, liver, lungs, air sacs, skin, and bone marrow. It is spread through inhalation, direct contact with infected birds, and ingestion of contaminated food or water.

Proventricular dilatation disease (PDD), also known as avian bornavirus (ABV) or macaw wasting disease, is a fatal disease that poses a serious threat to all domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Abramson *et al.* 1995, p. 288). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100-percent mortality rate in affected birds, although the exact manner of transmission between birds is unclear (Kistler *et al.* 2008, p. 1).

The extent to which these diseases occur in wild populations is unclear. However, given the resumption of importation of parrot species into Jamaica, rates of false negatives in testing of diseases, the inability to detect asymptomatic carriers when viruses are dormant and the host is not shedding live virus, known occurrences of escaped nonnative parrot species, and the vulnerability of island species to foreign microorganisms, it appears that the yellow-billed parrot may be at risk of disease transmission from nonnative parrot species imported into Jamaica (Koenig 2011, pers. comm.). Additionally, in 2011, Jamaica's National Environment and Planning Agency issued a press release stating that steps were being taken to request the return of the endemic Jamaican parrots smuggled out of Jamaica in 2011 (Jamaica Observer 2011a, unpaginated). Since being confiscated, the parrots have been housed at the Schönbrunn Zoo; if these parrots have not been maintained under strict quarantine conditions, they also present a disease risk if repatriated to Jamaica (Koenig 2011, pers. comm.).

Predation

The Jamaican boa, or yellow boa (*Epicrates subflavus*), is the only native predator to be of potential consequence for roosting parrots (Koenig 2008, p. 144). The yellow boa is also an endemic species listed as vulnerable by Jamaica. Edge habitats appear to provide an optimal habitat for the boa due to the proximity to human settlements and the subsequent increased number of pests, such as rats (Tole 2006, p. 799). Also, edge habitats are exposed to more sunlight than the interior forest; this exposure likely results in an increase in the abundance of vines, which enhance connectivity between neighboring trees and facilitate the movement of boas (Koenig *et al.* 2007, p. 86). Habitat loss has contributed to the decline and isolation of yellow boas, although they are common in Cockpit Country, and nestling parrots represent one important prey item (Koenig *et al.* 2007, p. 87; Koenig 2001, p. 221). Although yellow-billed parrots appear to prefer interior forests and are less common in edge habitat than the black-billed parrot,

there is direct evidence of yellow boas preying on yellow-billed parrot nestlings and predation by yellow boas has been identified as a major cause of the species' dwindling numbers (Koenig *et al.* 2007, p. 82; Tole 2006, p. 799; Koenig 2001, p. 217; Koenig 1999, p. 10). As deforestation continues and more edge habitat is created (see Factor A discussion, above), the yellow-billed parrot may become more vulnerable to predation by boas. Any decline in recruitment due to predation of nestlings will have a negative impact on the ability of the yellow-billed parrot population to stabilize or increase.

Red-tailed hawks (*Buteo jamaicensis*) are another important predator of fledgling and juvenile parrots. They occur in low densities across the closed canopy of Cockpit Country; however, they are commonly observed in peripheral habitat. Mining in Cockpit Country would create additional suitable habitat for these birds and increase the risk of predation on parrots (Koenig 2008, p. 144).

Summary of Factor C

Imported, nonnative psittacines were identified as a high threat to the yellow-billed parrot, in part, due to concerns for the introduction of highly pathogenic strains of avian influenza. Although we have no information that the yellow-billed parrot has been impacted by disease at a level which may affect the status of the species as a whole, the risk of disease transmission is now elevated, given the termination of the ban on importation of nonnative parrot species, past occurrences of escaped parrots, uncertainties in disease detection, the declining population of yellow-billed parrots in Jamaica, and the declining extent and quality of habitat. Because the yellow-billed parrot is an island endemic species, it may be particularly vulnerable to the effects of introduced diseases.

There is direct evidence of boas preying on yellow-billed parrot nestlings. Edge habitat provides an optimal habitat for the yellow boa. As primary forests diminish and edge habitat increases, predation by boas on parrots may also increase. We do not have any information on actual predation by red-tailed hawks on the yellow-billed parrot. However, if mining occurs in Cockpit Country, habitat may be altered to conditions suitable for the hawk and increase the risk of predation.

D. Inadequacy of Existing Regulatory Mechanisms

National Laws

The yellow-billed parrot is listed under the Second Schedule of Jamaica's Endangered Species (Protection, Conservation and Regulation of Trade) Act (JESA). The Second Schedule includes those species that could become extinct or which have to be effectively controlled (JESA 2000, pp. 72, 80). It is illegal to buy and/or sell Jamaican parrots locally or trade them internationally (NEPA 2010b, unpaginated; JESA 2000, p. 14; Snyder *et al.* 2000, p. 107; Wiley 1991, p. 202). CITES permits or certificates are required to import animals under JESA (Williams-Raynor 2010, unpaginated). Offenses can result in a fine of 2,000,000 Jamaican dollars (approximately $23,500 U.S. dollars), imprisonment up to 2 years, or both. If convicted in a Circuit Court, the offender is subject to a fine, prison term up to 10 years, or both (JESA 2000, p. 39).

Parrots have full protection under section six of the Jamaican Wildlife Protection Act (1974) (WPA) (Wiley 1991, p. 202). The WPA was originally passed in 1945, to regulate sport hunting and fishing, but since that time has undergone changes to address protection of animals. It does not, however, address habitat protection or the conservation of flora (Levy and Koenig 2009, p. 263). Possession is regulated by the WPA (Koenig 1999, p. 10). Under this Act, it is illegal for any person to hunt or possess a protected bird, including the yellow-billed parrot; to take the nest or egg of any protected bird; or to have in possession the nest or egg of any protected bird (WPA 1945, pp. 4–5). Under section 20 of the legislation, anyone found in possession of a live Jamaican parrot or any of its parts can face a maximum fine of 100,000 Jamaican dollars ($1,200 U.S. dollars) or 12 months in prison (WPA 1945, p. 11). However, fines levied are often much less. For example, one offender was charged a fine of only 5,000 Jamaican dollars ($55 U.S. dollars) (Sylvester 2011, unpaginated).

As described above under Factor B, the poaching of adult and nestling yellow-billed parrots for the local pet bird trade has contributed to the decline of the species and remains a threat. Additionally, the yellow-billed parrot has recently been documented in the international black market, further contributing to the decline of the species. Therefore, the JESA and WPA do not appear to adequately protect this species.

Forestry Acts of 1937 and 1973 provide certain protections to some habitat (e.g., Cockpit Country Forestry Reserve), and other areas have been established as sanctuaries (Snyder *et al.* 2000, p. 107; Wiley 1991, p. 202). There are more than 150 forest reserves, which provide for the preservation of forests, watershed protection, and ecotourism (Levy and Koenig 2009, p. 263). After Hurricane Gilbert in 1988, a new Forest Act (1996) was implemented. This Forest Act provides for the conservation and sustainable management of forests and covers such activities as protection of the forest for ecosystem services and biodiversity (Levy and Koenig 2009, p. 263). The Forest Act provides for the declaration of forest reserves and forest management areas for purposes such as conservation of natural forests, development of forest resources, generation of forest products, conservation of soil and water resources, and protection of flora and fauna. The lease of any parcel of land in a forest reserve is also regulated. Management plans are required every 5 years, and they include a determination of an allowable annual cut, forest plantations to be established, a conservation and protection program, and portions of the land to be leased and for what purposes. Clearing of land for cultivation, cattle grazing, and the burning of vegetation are regulated. Permits are also required for harvesting of timber on Crown land, the processing of timber, or sale of timber; no person may cut a tree in a forest reserve without a license. As described above under Factor A, deforestation is the main threat to Jamaica's forests. Forests originally covered 97 percent of the island; they now cover only 30 percent. The remaining forests continue to be threatened by deforestation from logging, agriculture, and mining; therefore, it appears that this regulatory mechanism does not adequately protect the forest resources of Jamaica.

Under Jamaica's Natural Resources Conservation Authority Act, an environmental permit is required for the first-time introduction of species of flora and fauna and genetic material (Williams-Raynor 2010, unpaginated). Mining is also regulated by this act. Before any physical development or construction can take place, a permit must be obtained from the Natural Resources Conservation Authority (NRCA). If the activity is likely to be harmful to public health or natural resources, NRCA can refuse a permit or order the immediate cessation of the activity or even closure of the plant (Berglund and Johansson 2004, p. 8).

The Natural Resources Conservation Authority Act also addresses habitat protection by providing a framework for a system of protected areas, such as the Blue and John Crow Mountains National Park (Levy and Koenig 2009, p. 263). We do not have information to completely analyze the adequacy of this regulatory mechanism. Due to the ongoing threats to Jamaica's forest resources, it appears that this regulatory mechanism may not be adequate to ameliorate those threats.

Under the Mining Act (1947), bauxite deposits are owned by the Jamaican Government, not by the owner of the land. The government may issue licenses to anyone to explore the land or mining leases to exploit it; therefore, in order to prospect and search for minerals, companies do not need to purchase the land. The Mining Act gives the lessee or the license holder the right to enter government land or privately owned land to search for minerals or to mine minerals. Compensation is payable to the landowner for damages to land and property. The Mining Act also stipulates that the mining companies must restore every mined area of land to the level of productivity that existed prior to the mining. Restoration must take place within 6 months following the end of mining activity. Failure to do so results in a penalty of $4,500 U.S. dollars per acre. The average cost for mined-out bauxite restoration is $4,000 U.S. dollars per acre; therefore, companies are more encouraged to restore. According to the Jamaican Bauxite Institute (the government agency responsible for monitoring the bauxite industry), it is unusual for companies to not take actions to restore (Berglund and Johansson 2004, p. 7). However, there are reports that penalties for failing to meet reclamation requirements are rarely enforced. Furthermore, when restoration is done, it is often planted with nonnative grasses and is not the same habitat that existed before mining (see "Bauxite Mining" section under Factor A discussion, above) (BLI 2011c, unpaginated; Koenig 2008, p. 141; BLI 2006, unpaginated). Given the resulting habitat following bauxite mining on Mount Diablo, it appears that this regulatory mechanism is not adequate to ameliorate threats to the forest resources of Jamaica.

An import permit is also required from Jamaica's Veterinary Services Division under the Animal Disease and Importation Act (Williams-Raynor 2010, unpaginated). Additionally, no caged bird may be imported into Jamaica from Trinidad and Tobago or any country of South America. However, Jamaica's importation and quarantine regulations are focused on protecting human health, agriculture, and commercial interests, rather than wildlife (Koenig 2011, pers. comm.). Based on an increase in illegal importation of animals into Jamaica (see Factor E discussion, below), it appears that this law may not adequately protect the yellow-billed parrots from potential disease, hybridization, or competition with nonnative species.

There are at least 34 pieces of Jamaican legislation that refer to the environment. However, there are problems with conservation in Jamaica that stem from poor communication between various government institutions, regulations insufficient at recognizing the value of biodiversity, insufficient funding, poor enforcement, and incomplete and improper environmental impact assessments (Levy and Koenig 2009, p. 263). In fact, due to the limitations of the Forestry Department and NRCA, management of the first national park was delegated to a nongovernmental organization, Jamaica Conservation and Development Trust (JCDT) (Levy and Koenig 2009, p. 263). The Forestry Department currently manages the entire Cockpit Country region as a forest reserve; however, they lack adequate technical and enforcement staff to respond to the increasing deforestation problem (Tole 2006, p. 799).

Policies have led to a greater awareness of the legal status of parrots; however, they continue to be illegally harvested for local and international trade (Snyder *et al.* 2000, p. 107). A stricter policy on poaching of nests is needed (Snyder *et al.* 2000, p. 107; Wiley 1991, p. 202). At a meeting in February 2010, Jamaica's National Environment and Planning Agency, along with others, decided to take actions to cut down on trade. These actions include a public awareness program, increased monitoring of ports and territorial waters, adding pet stores in the Natural Resources Conservation Authority's permit and license system, and publicizing information on seizures and confiscations; to date the agency has undertaken the awareness campaign (Williams-Raynor 2010, unpaginated).

Protected Areas

Habitat in the Blue and John Crow Mountains was declared a national park in 1989, and is managed by the Jamaica Conservation and Development Trust, a local nongovernmental organization (NGO) (BLI 2011d, unpaginated; BLI 2011e, unpaginated; Dunkley and Barrett 2001, p. 1; Snyder *et al.* 2000, p. 107; Wiley 1991, p. 202). It protects one third of the approximately 30 percent of Jamaica that remains forested (TNC 2008b, unpaginated). The purpose of this national park is to ensure long-term conservation of biodiversity, ecosystem services, and other cultural heritage. The main conservation objective is to maintain and enhance the remaining area of closed broadleaf forest and the flora and fauna within it. The park is guided by a 5-year management plan (IUCN 2011, unpaginated).

Enforcement and management of the national park are weak. Laws that prohibit forest clearance inside National Parks are largely not enforced as park rangers fear reprisals from farmers (Chai *et al.* 2009, pp. 2489, 2491). One study found that even after designation as a protected area, the Blue and John Crow Mountains National Park continued to experience forest clearance and fragmentation, resulting in an increasing number of smaller, more vulnerable fragments, species shifts, and loss in biodiversity. However, forest regrowth increased, resulting in a 63 percent decline in deforestation (Chai *et al.* 2009, pp. 2487–2488, 2489). Because this park is managed by an NGO, funding is a continuing problem and restricts actions (BLI 2011d, unpaginated).

Fifteen important bird areas (IBAs) cover approximately 3,113 km^2 (1,202 mi^2), or 25 percent, of Jamaica's land area. The yellow-billed parrot is listed as occurring in 10 of these IBAs, although population estimates are not available for most. IBAs are international site priorities for bird conservation. These areas may overlap with forest reserves or Crown lands that offer protection, but designation as an IBA itself does not afford any protection to the area. In Jamaica, 44 percent of the area covered by IBAs is under formal protection, but active management is minimal in many areas (Levy and Koenig 2009, p. 265).

International Laws

The yellow-billed parrot is listed in Appendix II of CITES. CITES is an international treaty among 175 nations, including Jamaica and the United States, which entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The Act designates the Secretary of the Interior as lead responsibility to implement CITES on behalf of the United States, with the functions of the Management and Scientific Authorities to be carried out by the Service. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild

populations by regulating the import, export, and reexport of CITES-listed animal and plant species.

Through Resolution Conf. 8.4 (Rev. CoP15), the Parties to CITES adopted a process, termed the National Legislation Project, to evaluate whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2010b, pp. 1–5). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether a Party's domestic laws designate the responsible Scientific and Management Authorities, prohibit trade contrary to the requirements of the Convention, have penalty provisions in place for illegal trade, and provide for seizure of specimens that are illegally traded or possessed. The Government of Jamaica was determined to be in Category 1, which means they meet all the requirements to implement CITES (*http://www.cites.org*, SC59 Document 11, Annex p. 1).

As discussed above under Factor B, we do not consider international trade controlled via valid CITES permits to be a threat impacting this species. Therefore, protection under this Treaty against unsustainable international trade is an adequate regulatory mechanism.

The import of yellow-billed parrots into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that imports to the United States of exotic birds are biologically sustainable and not detrimental to the species. The WBCA generally restricts the importation of most CITES-listed live and dead exotic birds except for certain limited purposes such as zoological display or cooperative breeding programs. Import of dead specimens is allowed for scientific specimens and museum specimens. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if certain standards are met and they are subject to a management plan that provides for sustainable use. At this time, the yellow-billed parrot is not part of a Service-approved cooperative breeding program and has not been approved for importation of wild-caught birds.

International trade of parrots was significantly reduced during the 1990s, as a result of tighter enforcement of CITES regulations, stricter measures under European Union legislation, and adoption of the WBCA, along with adoption of national legislation in various countries (Snyder *et al.* 2000, p. 99). As discussed above under Factor B, we found that legal commercial international trade has been very limited, and we do not consider international trade controlled via valid CITES permits to be a threat impacting this species. However, yellow-billed parrots are taken for the local Jamaican market and have recently been documented in illegal international trade. We believe that regulations are not adequately enforced to ameliorate threats from poaching for Jamaica's domestic pet bird trade or illegal international trade.

Summary of Factor D

Although there are laws intended to protect the forests of Jamaica and the yellow-billed parrot, these laws are not adequate to ameliorate: Impacts to the habitat of the yellow-billed parrot from deforestation via mining, logging, and agriculture, even within protected areas such as the Blue and John Crow Mountains National Park; the risk of disease transmission; predation, which is exacerbated by habitat alteration; and poaching for the local and international pet bird market.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Hurricanes

Hurricanes are a constant threat to island populations of wildlife and are a frequent occurrence in the Caribbean (Wiley and Wunderle 1993, p. 320). In 1988, Hurricane Gilbert hit Jamaica and caused widespread damage to the island's mid-level and montane forests; Cockpit Country, Blue Mountains, and John Crow Mountains all suffered severe and very extensive damage (Varty 1991, pp. 135, 138). Since 2004, Jamaica has been hit by five major storms, including two hurricanes and three tropical storms (Thompson 2011, unpaginated). Global climate change models predict increased hurricane frequency and intensity for the Caribbean (Koenig 2011, pers. comm.; Koenig 2009, p. 1). The most vulnerable birds are frugivorous and birds that require large trees for foraging or nesting; require a closed canopy forest; have special microclimate requirements; or live in a habitat in which vegetation is slow to recover, like the yellow-billed parrot (Wiley and Wunderle 1992, pp. 319, 337). Survival of small populations within a fragmented habitat becomes more uncertain if the destructive potential of catastrophic events increases, as predicted for hurricanes with increased climate change (Wiley and Wunderle 1993, p. 319).

Frequent hurricanes can have direct and indirect effects on bird populations. Direct effects include mortality from winds, rain, and storm surges, and geographic displacement of individuals by the wind. Wet plumage may cause hypothermia and death in birds, with chicks being at greater risk than adults. Additionally, birds may be killed by falling trees or flying debris, birds may be thrown against objects, or high winds may blow them out to sea where they die from exhaustion and drowning (Wiley and Wunderle 1993, pp. 319, 321–322). However, the greatest impacts to birds are the indirect effects that come after the storm has passed and stem from the destruction of vegetation. These effects include loss of food sources, loss of nests and nesting sites, increased vulnerability to predation, microclimate changes, and increased conflict with humans (Wiley and Wunderle 1993, pp. 319, 321, 326, 337; Varty 1991, p. 148).

Defoliation is the most common type of damage caused by hurricanes. High winds remove flowers, fruit, and seeds, impacting frugivores, like the yellow-billed parrot, the greatest. Larger trees, which are typically the best producers, are most affected by hurricanes. Certain sections of Jamaica following Hurricane Gilbert regenerated quickly, while the destruction in some areas was so complete it was estimated to take many years to recover. The majority of trees and shrubs were reported to have been mostly or totally defoliated; trees in flower or fruit lost their blooms (Varty 1991, pp. 139, 148). In some cases, the production of flowers and fruits are less than 50 percent of pre-hurricane levels after 1 year (Wiley and Wunderle 1993, pp. 324–325). Seven months after Hurricane Gilbert, some areas had little or no apparent regrowth; although most trees showed signs of refoliation, and after 10 months, some trees began to show signs of growth (Varty 1991, pp. 140–141). For frugivores, food supplies are likely to be reduced for several years following a destructive hurricane, and with limited resources, birds may experience greater competition for food, leading to a decline in populations (Wiley and Wunderle 1993, p. 332; Varty 1991, pp. 144, 148).

Nesting sites can also be damaged by high winds, rain, or flooding. The larger, taller trees, like those needed by the yellow-billed parrot for nesting activities, are the most susceptible to snapping or uprooting (Wiley and Wunderle 1993, p. 327). During Hurricane Gilbert, many trees were toppled or had crowns or major limbs

broken or snapped off. Others were damaged or knocked over by other windfall trees. In some places, landslides totally destroyed the forests (Varty 1991, p. 139). The loss of these nesting trees further reduces the already limited nesting cavities available. Damaged trees that remain standing are more likely to be lost in future storms, increasing the risk to yellow-billed parrots using them. However, trees that suffer limb breakage but remain standing may create additional cavities for nesting (Wiley and Wunderle 1993, pp. 326–328). With the loss of suitable nesting sites, reproductive responses may vary following a storm. Hurricane Gilbert severely damaged or blew over 50 percent and 44 percent of the larger trees in John Crow Mountains and Cockpit Country, respectively; however, some yellow-billed parrots were observed successfully breeding in Cockpit Country within 10 months of the storm (Wiley and Wunderle 1993, p. 335; Varty 1991, pp. 143, 149).

Defoliated habitat may increase the risk of yellow-billed parrots to predators, including humans. For example, because of competition for limited food resources, forest dwellers may be forced to forage closer to the ground or wander more widely, exposing them to predators. Birds may be weakened after a storm and serve as an easy source of protein for predators and humans in need of food. Additionally, while in search of food and cover, birds may come into conflict with humans in agricultural regions, making them more vulnerable to poaching; farmers may shoot birds to protect any remaining crops (Wiley and Wunderle 1993, pp. 330–332). Hurricanes also create additional edge habitat by increasing the number and size of forest openings; this may enable predators to invade forest tracts they would otherwise avoid (Wiley and Wunderle 1993, p. 336).

Furthermore, where trees have been blown down, subsistence farmers may move in to exploit the land. Governments may also make subsidies available for timber removal and development of the land, including the use of chainsaws and heavy equipment to clear away debris and dead trees. The equipment may not be recalled following cleanup and may be used to clear healthy forests (Wiley and Wunderle 1993, p. 331). Following Hurricane Gilbert, chainsaws brought in for cleanup were later used to clear forests for timber (Varty 1991, p. 146). Additionally, farmers lost most or all of their cultivated land, increasing the demand for new land and, therefore, resulting in additional deforestation (Varty 1991, p. 145).

Hurricanes are a natural occurrence in the Caribbean, and birds have adapted to periodic storms. Parrots should be able to adapt to changes following hurricanes, and healthy, wide-ranging populations should be able to, in the long term, survive hurricanes. However, hurricanes play a more important role in extinction when a species already has a restricted and fragmented range due to habitat loss and is reduced to fewer individuals (Wiley and Wunderle 1993, pp. 340–341; Varty 1991, p. 149; Wiley 1991, p. 191). After a population has declined due to deforestation activities, they may not be able to recover from the additional loss of forests from hurricanes (Varty 1991, p. 149). The yellow-billed parrot population has survived through hurricanes, but long-term survival is a concern, given the additional impact of hurricanes on food and nesting sources, combined with the continuing habitat destruction by humans (Wiley 1991, p. 203). If the large, contiguous forests of Cockpit Country remain intact, the yellow-billed parrot is predicted to be able to adapt to predicted hurricane frequency and intensity. However, if the forests are severely fragmented and dominated by edge habitats, reproductive performance is predicted to decrease, leading to population loss, and hurricanes to hasten the species' extinction (Koenig 2011, pers. comm.; Koenig 2009, pp. 1–2).

Competition With Nonnative Species

A temporary ban was placed on the importation of nonnative psittacines due to potential introduction of disease, hybridization, and competition with the two native parrot species. However, the ban is no longer in effect (Koenig 2011, pers. comm.), leaving the yellow-billed parrot vulnerable to hybridization and competitive exclusion with escaped nonnative psittacines imported for the pet industry (Koenig 2009, p. 1). Jamaica's National Environment and Planning Agency has noticed an increase in the illegal importation of monkeys, birds, and snakes into the country. Jamaica is now believed to be a trans-shipment point for illegal trade in animals from Central and South America (NEPA 2010a, p. 1). Nonnative species not only introduce diseases to native wildlife (see Factor C discussion, above), but escaped individuals also pose a threat through hybridization and competition for food and nesting sources (Levy and Koenig 2009, p. 264; Wiley 1991, p. 191).

In 2007, a yellow-naped Amazon (*Amazona auropalliata*) was observed flying freely in the area of yellow-billed parrots and, more importantly, was observed forming a pair-bond with a yellow-billed parrot. It was determined that the Amazon parrot must have been a captive bird that had escaped, rather than a situation of natural colonization. As the yellow-billed parrot and the yellow-naped Amazon belong to the same genus, the potential for hybridization is high (Koenig 2009, p. 2). In the long term, should a small population of other Amazon species, like the yellow-naped Amazon, become established, hybridization could compromise the unique genetic makeup of the yellow-billed parrot. Additionally, mainland Amazon species, like the yellow-naped Amazon, are significantly larger and heavier than Jamaican parrots; it is likely that these nonnatives would dominate the yellow-billed parrot and exclude them from nest sites (Koenig 2009, p. 2).

Summary of Factor E

Hurricanes frequently occur in the Caribbean. Healthy, widespread populations of birds should be able to adapt to changes following a hurricane. However, species like the yellow-billed parrot, which are frugivores and rely on cavities in old growth trees, are particularly vulnerable to the impacts of hurricanes on forests. Food sources may be reduced for years following a storm, and already limited nesting cavities may be further reduced; declines in these vital resources could result in competition with other species and a decline in the population. These impacts are further exacerbated due to deforestation activities that have already caused a decline in the extent and quality of yellow-billed parrot habitat and declines in the yellow-billed parrot population. Because of the ongoing loss of habitat, yellow-billed parrots may not be able to recover from the impacts of a destructive hurricane.

Although we have no information that the yellow-billed parrot has been impacted by hybridization or competition with nonnative parrot species, the risk of these occurrences is elevated given the termination of the ban on importation of nonnative parrot species, past occurrences of escaped parrots, the observed increase in the illegal importation of birds, the larger size of nonnative parrots, the declining population of yellow-billed parrots in Jamaica, and the declining extent and quality of habitat.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing

whether the yellow-billed parrot is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the yellow-billed parrot. We reviewed the petition, information available in our files, and other available published and unpublished information.

The yellow-billed parrot is only found on the island of Jamaica and occurs in fragments across its range; at least 80 percent of the yellow-billed parrot population occurs in one area of the island. The entire population of this species is reported as declining, and the extent and quality of habitat is also declining. This species faces immediate and significant threats, primarily from deforestation through logging, conversion of land to agriculture, road construction, and mining and the subsequent encroachment of nonnative species. Ongoing deforestation activities threaten to remove more of the limited mature trees the yellow-billed parrot needs for nesting. Cockpit Country is also threatened by potential future mining. If mining were to occur, the damage would be irreversible. Additionally, habitat alteration creates an optimal habitat for the yellow boa, which has already been reported to prey on yellow-billed parrot nestlings; continuing deforestation increases this risk of predation. Adults and nestling yellow-billed parrots are captured for the local and international pet bird trade. Poaching of birds for the pet trade removes vital individuals from the population and essential nesting cavities. The risk of disease transmission and competition with nonnative parrot species is elevated now that the temporary ban on the importation of nonnative psittacine species has been lifted. There are regulatory mechanisms in place to protect the yellow-billed parrot and its habitat, but enforcement appears to be inadequate given the threats this species is currently facing. Hurricanes also pose a threat to the yellow-billed parrot because of the already ongoing deforestation and population decline. This species, in the long term, may not be able to recover from the additional impacts of hurricanes on foraging and nesting resources given the continuing loss of food and nesting resources by logging, agriculture, road development, and mining.

Section 3 of the Act defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," and a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The magnitude of the threats the yellow-billed parrot is facing is high. Nesting success is reported to be low for this species. Given the declining population, limited habitat and range, the ongoing and future threats to the remaining habitat, the associated increased risk of predation, and the loss of individuals from poaching, long-term survival of this species is a concern. Impacts from hurricanes are likely to be exacerbated by the ongoing deforestation and declining population. Any loss of individuals from the population or loss of vital nesting cavities from current or future threats further reduces the population and loss of already limited habitat and is likely to affect the reproductive success of this species. Because the population of this species is estimated at 10,000 to 20,000 individuals and mining is not currently occurring in Cockpit Country, we do not believe that this species is currently in danger of extinction. However, given the ongoing deforestation of remaining suitable habitat for the yellow-billed parrot in Jamaica, the loss of individuals through poaching for the pet bird trade or predation, the exacerbated impacts of hurricanes, and no information to suggest that these threats will be ameliorated, we believe the species will continue to decline and fecundity and recruitment affected such that the species is at risk of extinction in the foreseeable future. Furthermore, given the value of bauxite to Jamaica, the amount of bauxite deposits in Cockpit Country (a stronghold for the species), that mining companies have already drilled for samples in the area, and the lack of an official policy against mining in the area, we believe that mining could occur in Cockpit Country in the foreseeable future with irreversible impacts to remaining suitable habitat and the yellow-billed parrot. Based on current threats and the impacts to the yellow-billed parrot and the potential impacts of future threats, we believe the species will continue to decline and will likely become in danger of extinction in the foreseeable future. Therefore on the basis of the best scientific and commercial information, we find that the yellow-billed parrot meets the definition of a "threatened" species under the Act, and we are listing the yellow-billed parrot as threatened throughout its range.

Significant Portion of the Range

Having determined that the yellow-billed parrot meets the definition of threatened throughout its range, we must next consider whether the yellow-billed parrot is in danger of extinction within a significant portion of its range.

The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "significant portion of its range" is not defined by the statute. For the purposes of this finding, a portion of a species' range is "significant" if it is part of the current range of the species and it provides a crucial contribution to the representation, resiliency, or redundancy of the species. For the contribution to be crucial it must be at a level such that, without that portion, the species would be in danger of extinction.

In determining whether a species is endangered or threatened in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of "significant" (*i.e.*, the loss of that portion clearly would not reasonably be expected to increase the vulnerability to extinction of the entire species to the point that the species would then be in danger of extinction), such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine their status (*i.e.*, whether in fact the species is endangered or threatened in a significant portion of its range). Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address either the "significant"

question first, or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is "significant."

Applying the process described above for determining whether this species is endangered in a significant portion of its range, we considered status first to determine if any threats or future threats acting individually or collectively endanger the species in a portion of its range. We have analyzed the threats to the degree possible, and determined they are essentially uniform throughout the species' range and no portion is being impacted to a significant degree more than any other such that the species is currently endangered in any portion of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Special Rule

Section 4(d) of the Act states that the Secretary of the Interior (Secretary) may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9 of the Act. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, and provisions that are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

Under the special rule, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the yellow-billed parrot, except that import into and export from the United States of certain yellow-billed parrots, and certain acts in interstate commerce of yellow-billed parrots, will be allowed without a permit under the Act, as explained below.

Import and Export

The special rule applies to all commercial and noncommercial international shipments of live and dead yellow-billed parrots and parts and products, including the import and export of personal pets and research samples. In most instances, the special rule adopts the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain yellow-billed parrots. The import into and export from the United States of birds taken from the wild after the date this species is listed under the Act (see **DATES** section, above); conducting an activity that could take or incidentally take yellow-billed parrots; and foreign commerce will need to meet the requirements of 50 CFR 17.31 and 17.32, including obtaining a permit under the Act. However, the special rule allows a person to import or export either: (1) A specimen held in captivity prior to the date this species is listed under the Act (see **DATES** section, above), or (2) a captive-bred specimen, without a permit issued under the Act, provided the export is authorized under CITES and the import is authorized under CITES and the WBCA. If a specimen was taken from the wild and held in captivity prior to the date this species is listed under the Act (see **DATES** section, above), the importer or exporter will need to provide documentation to support that status, such as a copy of the original CITES permit indicating when the bird was removed from the wild or a museum specimen report. For captive-bred birds, the importer will need to provide either a valid CITES export/reexport document issued by a foreign Management Authority that indicates that the specimen was captive-bred by using a source code on the face of the permit of either "C," "D," or "F." For exporters of captive-bred birds, a signed and dated statement from the breeder of the bird, along with documentation on the source of their breeding stock, will document the captive-bred status of U.S. birds.

The special rule applies to birds captive-bred in the United States and abroad. The terms "captive-bred" and "captivity" used in the special rule are defined in the regulations at 50 CFR 17.3 and refer to wildlife produced in a controlled environment that is intensively manipulated by man from parents that mated or otherwise transferred gametes in captivity. Although the special rule requires a permit under the Act to "take" (including harm and harass) a yellow-billed parrot, "take" does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife when applied to captive wildlife.

We assessed the conservation needs of the yellow-billed parrot in light of the broad protections provided to the species under CITES and the WBCA. The yellow-billed parrot is listed in Appendix II under CITES, a treaty which contributes to the conservation of the species by monitoring international trade and ensuring that trade in Appendix II species is not detrimental to the survival of the species (see *Conservation Status*, above). The purpose of the WBCA is to promote the conservation of exotic birds and to

ensure that imports of exotic birds into the United States do not harm them (see Factor D discussion, above). Data indicate that illegal international trade in Jamaican wildlife is on the rise; however, the requirements of CITES, WBCA, and the special rule will minimize illegal trade of yellow-billed parrots with the United States. Additionally, the best available commercial data indicate that poaching of the yellow-billed parrot stems mainly from illegal trade in the domestic markets of Jamaica. Thus, the general prohibitions on import and export contained in 50 CFR 17.31, which only extend within the jurisdiction of the United States, will not regulate such activities. Accordingly, we find that the import and export requirements of the special rule provide the necessary and advisable conservation measures that are needed for this species.

Interstate Commerce

Under the special rule, a person may deliver, receive, carry, transport, or ship a yellow-billed parrot in interstate commerce in the course of a commercial activity, or sell or offer to sell in interstate commerce a yellow-billed parrot without a permit under the Act. At the same time, the prohibitions on take under 50 CFR 17.31 apply under this special rule, and any interstate commerce activities that could incidentally take yellow-billed parrots or otherwise prohibited acts in foreign commerce require a permit under 50 CFR 17.32.

Although we do not have current data, we believe there are few yellow-billed parrots in the United States. Current International Species Information System (ISIS) information shows no yellow-billed parrots held in U.S. zoos (ISIS 2011, p. 1). However, some zoos do not enter data into the ISIS database. Persons in the United States have imported and exported captive-bred yellow-billed parrots for commercial purposes and one body for scientific purposes, but trade has been very limited (UNEP–WCMC 2011, unpaginated). We have no information to suggest that interstate commerce activities are associated with threats to the yellow-billed parrot or will negatively affect any efforts aimed at the recovery of wild populations of the species. Therefore, because acts in interstate commerce within the United States have not been found to threaten the yellow-billed parrot, the species is otherwise protected in the course of interstate commercial activities under the incidental take provisions and foreign commerce provisions contained in 50 CFR 17.31, and international trade of this species is regulated under CITES, we find this special rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the yellow-billed parrot.

Correction to the Salmon-Crested Cockatoo Special Rule

On May 26, 2011, we published in the **Federal Register** (76 FR 30758) a final rule listing the salmon-crested cockatoo as threatened with a special rule under section 4(d) of the Act. In the preamble of that 4(d) rule, we explained that we were adopting a provision similar to the one we are adopting in this 4(d) rule for the yellow-billed parrot, which would allow certain acts in interstate commerce for salmon-crested cockatoos without a permit under 50 CFR 17.32. However, consistent with our intent in adopting the exceptions contained in the 4(d) rule for the salmon-crested cockatoo, we are correcting the regulations found at 50 CFR 17.41(c) for the salmon-crested cockatoo to clarify the specific acts in interstate commerce that may be conducted without a threatened species permit under 50 CFR 17.32.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.*)*

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov*, Docket No. FWS–R9–ES–2011–0075, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for "Parrot, yellow-billed" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Parrot, yellow-billed	*Amazona collaria*	Jamaica	Entire	T	804	NA	17.41(c)

* * * * *

■ 3. Amend § 17.41 by revising paragraph (c) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) The following species in the parrot family: Salmon-crested cockatoo *(Cacatua moluccensis)* and yellow-billed parrot *(Amazona collaria)*.

(1) Except as noted in paragraphs (c)(2) and (3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) *Import and export.* You may import or export a specimen without a permit issued under § 17.32 of this part only when the provisions of parts 13, 14, 15, and 23 of this chapter have been met and you meet the following requirements:

(i) *Captive-bred specimens:* The source code on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) document accompanying the specimen must be "F" (captive born), "C" (bred in captivity), or "D" (bred in captivity for commercial purposes) (see 50 CFR 23.24); or

(ii) *Specimens held in captivity prior to certain dates:* You must provide documentation to demonstrate that the specimen was held in captivity prior to the applicable date specified in paragraph (c)(2)(ii)(A) or (B) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

(A) *For salmon-crested cockatoos:* January 18, 1990 (the date this species was transferred to CITES Appendix I).

(B) *For yellow-billed parrots:* April 11, 2013 (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

(3) *Interstate commerce.* Except where use after import is restricted under § 23.55 of this chapter, you may deliver, receive, carry, transport, or ship in interstate commerce and in the course of a commercial activity, or sell or offer to sell, in interstate commerce the species listed in this paragraph (c) without a permit under the Act.

* * * * *

Dated: February 14, 2013.

Rowan W. Gould,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–05504 Filed 3–11–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2492–02]

RIN 0648–XC529

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; Golden Tilefish Trip Limit Adjustments

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

ACTION: Temporary rule; trip limit adjustments.

SUMMARY: On February 18, 2013, NMFS reduced the commercial trip limit for golden tilefish in the South Atlantic exclusive economic zone (EEZ) from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip because NMFS projected that 75 percent of the fishing year quota would be met on that day. Recent information indicates, however, that 75 percent of the fishing year quota has not been reached at this time. Therefore, through this temporary rule, NMFS reinstates the 4,000-lb (1,814-kg) commercial trip limit for golden tilefish in the South Atlantic EEZ from March 13, 2013, through March 21, 2013, when NMFS projects that 75 percent of the fishing year quota would be met. On March 22, 2013, the commercial trip limit for golden tilefish in the South Atlantic EEZ will go back to 300 lb (136 kg). These trip limit adjustments are necessary to achieve optimum yield and better manage the South Atlantic golden tilefish resource.

DATES: The 4,000-lb (1,814-kg) commercial trip limit for golden tilefish in the South Atlantic EEZ is effective from 12:01 a.m., local time, March 13, 2013, until 12:01 a.m., local time, March 22, 2013. The 300-lb (136-kg) commercial trip limit for golden tilefish in the South Atlantic EEZ is effective from 12:01 a.m., local time, March 22, 2013, through December 31, 2013, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, or email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery includes golden tilefish in the South Atlantic and is managed under the Fishery Management Plan for the Snapper-Grouper Resources of the South Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.44(c)(2), NMFS is required to reduce the trip limit in the commercial sector for golden tilefish from 4,000 lb (1,814 kg) to 300 lb (136 kg) per trip when 75 percent of the fishing year quota is met prior to September 1, by filing a notification to that effect with the Office of the Federal Register. The commercial quota for golden tilefish in the South Atlantic is 541,295 lb (245,527 kg), gutted weight, as specified in 50 CFR 622.42(e)(2). NMFS determined that 75 percent of the available commercial quota for golden tilefish would be reached on or before February 18, 2013. Accordingly, effective February 18, 2013, NMFS reduced the commercial golden tilefish trip limit to 300 lb (136 kg), gutted weight, in the South Atlantic EEZ (78 FR 10102, February 13, 2013).

Recent landings information indicate that the commercial sector for golden tilefish did not reach 75 percent of the fishing year quota on February 18, 2013, nor has 75 percent of the fishing year quota been reached at this time. Therefore, through this temporary rule, NMFS removes the commercial trip limit reduction for golden tilefish in the South Atlantic to reinstate the 4,000 lb (1,814 kg) trip limit from March 13, 2013, through March 21, 2013, when NMFS projects that 75 percent of the fishing year quota would be met. Effective March 22, 2013, the trip limit will be 300 lb (136 kg) per trip. The 300 lb (136 kg) trip limit will remain in effect until the quota is reached and the commercial sector closes, or through December 31, 2013, whichever occurs first.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.44(c)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the trip limit adjustments.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to achieve optimum yield and better manage the South Atlantic golden tilefish resource.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: March 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–05784 Filed 3–8–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC553

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 12, 2013, through June 30, 2013, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf of Mexico eastern zone into northern and southern subzones, and established their separate quotas. The 2012 to 2013 fishing year quota for the hook-and-line component of the commercial sector in the southern Florida west coast subzone is 607,614 lb (275,609 kg) (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(*2*), from the date that 75 percent of the southern Florida west coast subzone's hook-and-line gear quota has been harvested until a closure of the subzone's commercial sector of the hook-and-line component has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has projected that 75 percent of the hook-and-line gear quota for Gulf group king mackerel from the southern Florida west coast subzone will be reached by March 12, 2013. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the hook-and-line component of the commercial sector for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, March 12, 2013. The 500-lb (227-kg) trip limit will remain in effect until the component closes or until the end of the current fishing year (June 30, 2013), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31′06″ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. From November 1 through March 31, the southern subzone is designated as the area extending south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, Florida, boundary), *i.e.*, the area off Collier and Monroe Counties. Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48′ N. lat. and 26°19.8′ N. lat.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf king mackerel resource and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the hook-and-line component of the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment could result in a harvest well in excess of the established quota. Immediate implementation of this action is needed to protect the Gulf king mackerel resource.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: March 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–05782 Filed 3–8–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC550

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2013 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 10, 2013, through 1200 hours, A.l.t., August 25, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The B season allowance of the 2013 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 2,618 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock allowance by 39 mt to reflect the total underharvest of the A seasonal apportionment in Statistical Area 630. Therefore, the revised B season allowance of the pollock TAC in Statistical Area 630 is 2,657 mt (2,618 mt plus 39 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2013 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,457 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 6, 2013.

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

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

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

Dated: March 7, 2013.

Kara Meckley,

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

[FR Doc. 2013–05633 Filed 3–7–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC552

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2013 Pacific cod total allowable catch allocated to trawl catcher vessels in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 11, 2013, through 1200 hours, A.l.t., April 1, 2013.

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

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

The A season apportionment of the 2013 Pacific cod total allowable catch (TAC) allocated to trawl catcher vessels in the BSAI is 37,971 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2013 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing

allowance of 36,971 mt and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 7, 2013.

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

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

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

Dated: March 8, 2013.

Kara Meckley,

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

[FR Doc. 2013–05783 Filed 3–8–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 48
Tuesday, March 12, 2013

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 Parts 60 and 65

[Document No. AMS–LS–13–0004]

RIN 0581–AD29

Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Country of Origin Labeling (COOL) regulations to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information, and amend the definition for "retailer" to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA). The COOL regulations are issued pursuant to the Agricultural Marketing Act of 1996. The Agency is issuing this rule to propose changes to the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and is proposing other modifications to enhance the overall operation of the program.

DATES: Comments must be submitted on or before April 11, 2013.

ADDRESSES: Interested persons may submit written comments on this proposed rule using the following address:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. *Instructions:* All submissions received must include the docket number AMS–LS–13–0004; and/or Regulatory Information Number (RIN)0581–AD29 for this rulemaking. Comments may also be submitted to Julie Henderson, Director, COOL Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture (USDA); STOP 0216; 1400 Independence Avenue SW., Room 2620–S; Washington, DC 20250–0216. All comments should reference docket number AMS–LS–13–0004 and note the date and page number of this issue of the **Federal Register**.

Submitted comments will be available for public inspection at *http://www.regulations.gov* or at the above address during regular business hours. Comments submitted in response to this proposed rule will be included in the records 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 above address.

FOR FURTHER INFORMATION CONTACT: Erin Morris, Deputy Associate Administrator, AMS, USDA, by telephone on 202/690–4024, or via email at: *erin.morris@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (Pub. L. 107–171), the 2002 Supplemental Appropriations Act (2002 Appropriations) (Pub. L. 107–206), and the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–234) amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published a final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009.

Executive Summary

Purpose of the Regulatory Action

In June 2012, in a WTO case brought by Mexico and Canada, the WTO Appellate Body (AB) affirmed a previous WTO Panel's finding that the COOL requirements for muscle cut meat commodities were inconsistent with U.S. obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement). In particular, the AB affirmed the Panel's determination that the COOL requirements were inconsistent with the TBT Agreement's national treatment obligation to accord imported products treatment no less favorable than that accorded to domestic products. The WTO Dispute Settlement Body adopted its recommendations and rulings on July 23, 2012. The United States has until May 23, 2013, to comply with the WTO ruling.

As a result of this action, the Agency reviewed the overall regulatory program and is issuing this rule, under the authority of the Agricultural Marketing Act (7 U.S.C. 1621 *et seq.*), to propose changes to the labeling provisions for muscle cut covered commodities and other modifications to improve the overall operation of the program. The Agency expects that these changes will improve the overall operation of the program and also bring the current mandatory COOL requirements into compliance with U.S. international trade obligations.

Summary of the Major Provisions of the Regulatory Action in Question

Under this proposed rule, origin designations for muscle cut covered commodities derived from animals slaughtered in the United States would be required to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. In addition, this proposed rule would eliminate the allowance for any commingling of muscle cut covered commodities of different origins. These changes will provide consumers with more specific information about muscle cut covered commodities.

Costs and Benefits

The major cost of implementing the proposed amendments will be incurred at the packing or processing facility, in the case of pre-labeled products, or at the retail level, in the case of products labeled at retail. The estimated number of firms that would need to augment labels for muscle cut covered commodities is 2,808 livestock processing and slaughtering firms, 38 chicken processing firms, and 4,335 retailers. This totals 7,181 firms that

would need to augment the mandatory COOL information presented on labels for muscle cut covered commodities.

Based on 2009 data, the Food Safety and Inspection Service (FSIS) estimated there were approximately 121,350 raw meat and poultry unique labels submitted by official establishments (i.e., establishments regulated by FSIS) and approved by the Agency (76 FR 44862). Assuming the upper bound estimate of 121,350 unique labels, the Agency preliminarily estimates the midpoint cost of the proposed rule for this label change is $32,764,500 with a range of $16,989,000 to $47,326,500.

The Agency believes that the incremental economic benefits from the proposed labeling of production steps will be comparatively small relative to those that were discussed in the 2009 final rule.

A complete discussion of the cost and benefits can be found under the Executive Order 12866 section.

Summary of Proposed Changes to the COOL Regulations

Definitions

In the regulatory text for fish and shellfish (7 CFR part 60) and for all other covered commodities (7 CFR part 65), the definition for "retailer" is proposed to be amended to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) of 1930 (7 U.S.C. 499a(b)). This change would more closely align with the language contained in the PACA regulation and would help clarify that all retailers that meet the PACA definition of a retailer, whether or not they actually have a PACA license, are also covered by COOL.

Proposed Changes to the Labeling Provisions for Muscle Cut Covered Commodities

As a result of the Agency's review of the program regulations, the Agency is proposing to require that all origin designations for muscle cut covered commodities slaughtered in the United States specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. The requirement to include this information will apply equally to all muscle cut covered commodities derived from animals slaughtered in the United States. This requirement will provide consumers with more specific information on which to base their purchasing decisions without imposing additional recordkeeping requirements on industry. The Agency considers that these changes, which are discussed in detail below, are consistent with the provisions of the statute.

Labeling Covered Commodities of United States Origin

Under the current COOL regulations, for muscle cut covered commodities derived from animals that were born, raised, and slaughtered in the United States, the origin is allowed to be designated as "Product of the U.S."

Under this proposed rule, the United States country of origin designation for muscle cut covered commodities would be required to include location information for each of the production steps (i.e., "Born, Raised, and Slaughtered in the United States").

Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin (From Animals Slaughtered in the United States)

For muscle cut covered commodities of multiple countries of origin that include the United States, the current COOL regulations recognize two basic scenarios.

The first scenario deals with meat derived from animals that were born in another country (and thereby raised for a period of time) and were imported as feeder cattle that were further raised and slaughtered in the United States. For these products, current COOL regulations allow the origin to be designated as "Product of the U.S. and Country X." Under this proposed rule, as with U.S.-only origin products, the origin designation for these products would be required to include location information for each of the production steps.

However, as discussed in the preamble of the January 15, 2009, final rule (74 FR 2658), if animals are raised in another country and the United States, the raising that occurs in the United States may take precedence over the minimal raising that occurred in the animal's country of birth. Accordingly, under this proposed rule, the production step related to any raising occurring outside the United States may be omitted from the origin designation of these products (e.g., "Born in Country X, Raised and Slaughtered in the United States" in lieu of "Born and Raised in Country X, Raised and Slaughtered in the United States").

This omission is not permitted in the relatively rare situation where an animal was born in the United States, raised in another country (or countries) and then raised and slaughtered in the United States, which would result in the muscle cut covered commodity being designated as having a solely U.S. country of origin.

The second scenario relates to muscle cut covered commodities derived from animals that were imported for immediate slaughter as defined in § 65.180. In this scenario, under the current COOL regulations, these products are required to be designated as "Product of Country X and the United States."

Under this proposed rule, the origin designation for meat derived from animals imported for immediate slaughter would be required to include information as to the production steps taking place in the countries listed on the origin designation. However, the country of raising for animals imported for immediate slaughter as defined in § 65.180 shall be designated as the country from which they were imported (e.g., "Born and Raised in Country X, Slaughtered in the United States").

Commingling

The current COOL regulations allow for commingling of different origins. For example, under the current COOL regulations, for muscle cut covered commodities derived from animals born, raised, and slaughtered in the United States that are commingled during a production day with muscle cut covered commodities derived from animals that were raised and slaughtered in the United States, and are not derived from animals imported for immediate slaughter as defined in § 65.180, the origin is allowed to be designated, for example, as Product of the United States, Country X, and (as applicable) Country Y. Similarly, under the current COOL regulations, for muscle cut covered commodities derived from animals that are born in Country X or Country Y, raised and slaughtered in the United States, that were commingled during a production day with muscle cut covered commodities that were derived from animals that are imported into the United States for immediate slaughter as defined in § 65.180, the origin is allowed to be designated as Product of the United States, Country X, and (as applicable) Country Y.

This proposed rule would eliminate the allowance for any commingling of muscle cut covered commodities of different origins. As discussed above, all origin designations would be required to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived. Removing the commingling allowance allows consumers to benefit from more specific labels.

Labeling Imported Muscle Cut Covered Commodities

Under the current COOL regulations, imported muscle cut covered commodities retain their origin as declared to the U.S. Customs and Border Protection at the time the products entered the United States (i.e., Product of Country X) through retail sale.

Under this proposed rule, these labeling requirements for imported muscle cut covered commodities remain unchanged, although the Agency has restructured the regulatory text of this provision for clarity. As is permitted under the current COOL regulations, the Agency will continue to allow the origin designation to include more specific information related to production steps, provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 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 rules, and of promoting flexibility. This proposed rule has been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB). The Agency seeks comments and data on the estimated impacts of this rulemaking that may affect its designation under Executive Order 12866 and the Congressional Review Act.

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This proposed rule would amend the COOL regulations (1) to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and (2) to amend the definition for "retailer" to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) to enhance the overall operation of the program.

Initial Analysis of Benefits and Costs

The baseline for this analysis is the present state of the beef, chicken, goat, lamb and pork industries, which have been subject to the requirements of mandatory COOL (7 CFR parts 60 and 65) since the effective date of the final rule on March 16, 2009. Under this proposed rule, COOL requirements would remain essentially unchanged for imported muscle cut covered commodities. However, labeling requirements would change for muscle cut covered commodities derived from animals slaughtered in the United States—whether exclusively of United States origin, of multiple countries of origin that include the United States, or imported for immediate slaughter in the United States. For those products, covered retailers would need to inform their consumers of the country in which the relevant production steps—born, raised, and slaughtered—occurred.

As mentioned above in the summary of proposed changes to the COOL regulations, the definition for "retailer" would be amended to more closely align with the language contained in the PACA regulation and help clarify that all retailers that meet the PACA definition of a retailer, whether or not they actually have a PACA license, are covered by COOL. The Agency believes that this change in definition will not substantially alter the number of retailers subject to the COOL regulations. Therefore, the analysis of benefits and cost from this proposed rule focuses solely on the potential effects of the proposed amendments to the labeling provisions of the current COOL regulations.

Benefits: In the time since the Agency conducted the previous COOL regulation's Preliminary Economic Impact Analysis (PRIA) in 2003 (68 FR 61952) and the Final Regulatory Impact Analysis (FRIA) in 2009 (74 FR 2682), a number of studies have been published regarding the economic effects of mandatory COOL. However, the available literature has not addressed the potential benefits and costs of providing more specific information on production steps as proposed herein. As observed in the PRIA and the FRIA, the expected benefits from implementing mandatory COOL requirements remain difficult to quantify. This conclusion holds true for the proposed amendments to the labeling requirements under the current COOL regulations. The Agency invites comment on the benefits of this proposed rule and welcomes data that would help to inform a more quantifiable analysis.

Numerous comments received on previous COOL rulemaking actions indicate that there is interest by some consumers in the designation of the countries of birth, raising and slaughter on meat product labels. Specifying the production step occurring in each country listed on meat labels as proposed in this rule could provide additional benefits by providing more specific information on which consumers can base their purchasing decisions.

In addition, this proposed rule would eliminate the allowance for commingling of muscle cut covered commodities of different origins. As discussed in the preamble, removing the commingling allowance will allow the labels proposed under this rule to provide specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived.

The Agency has been unable to quantify incremental economic benefits from the proposed labeling of production steps and therefore requests detailed comment and data on this issue, most notably detailed data or studies on the value to consumers of having COOL information. The Agency concluded in the PRIA and FRIA that the economic benefits from the COOL requirements are positive, but difficult to quantify. The Agency believes that incremental economic benefits from the proposed labeling of production steps are difficult to quantify, and will be comparatively small relative to those that were discussed in the 2009 final rule.

Costs: Two conditions are necessary to inform retail consumers of the location in which production steps occurred. First, the relevant information must be collected by packers from producers and then passed to retailers. Second, the information must be made available by retailers to consumers through a placard, sign, label, sticker, or other format. Because of the steps that have been taken to achieve compliance with existing mandatory COOL requirements, the first condition has been met. That is, we do not anticipate that this proposed rule will require additional recordkeeping or any new systems to transfer information from one

level of the production and marketing channel to the next. The Agency is seeking comment on these assumptions and welcomes data that would help to inform a more refined analysis of the impacts of the rule at various points in production. The information provided to consumers at retail would be augmented to include information on the location(s) in which the three major phases of production occurred. Thus some incremental costs of implementing the proposed amendments would result from modifying the label (or other format) to reflect the additional production step information. We are specifically asking for comment and data regarding the extent to which there may be additional costs to collect and transmit data along the production and marketing chain, and how current production, distribution, and retail merchandising practices may be affected by the proposed rule.

As previously mentioned, no changes are being proposed to the existing country of origin labeling of imported muscle cuts derived from animals slaughtered in another country. Those products would continue to retain their origin as declared to the U.S. Customs and Border Protection at the time the products entered the United States through retail sale. Thus, there are no incremental costs associated with that scenario.

However, in the situation in which the covered muscle cut commodities are derived from animals slaughtered in the United States, labeling of the location(s) in which the animal was born, raised, and slaughtered would now be required. Packers and processors that provide muscle cut covered commodities to covered retailers, however, already obtain this production step information needed either to pre-label retail case-ready products with production step information or to provide that information to their retail customers. In the latter scenario, the retailer would then complete the labeling of the production steps to provide notification to consumers.

Under current mandatory COOL requirements, packers and processors must inform their retail customers as to the country of origin of the meat cuts that they supply. In turn, that means that packers and processors must obtain the country of origin information from their supply chain. Thus, the information on production steps required by this proposal is already available due to the current mandatory COOL requirements. The additional costs attributable to the proposed amendments would be the costs associated with transferring production step information to the product label.

For animals exclusively born, raised, and slaughtered in the United States, current labeling requirements would be augmented from, for example, "Product of the U.S." to "Born, Raised and Slaughtered in the U.S." In this example, the required statement increases from 19 to 40 characters and spaces. For animals born in another country and raised and slaughtered in the United States, current labeling requirements would be augmented from, for example, "Product of U.S. and Country X" to "Born in Country X, Raised and Slaughtered in the U.S." Finally, for an animal imported for immediate slaughter, current labeling requirements would be augmented from, for example, "Product of Country X and the U.S." to "Born and Raised in Country X, Slaughtered in the U.S." In these examples, the required statement increases by a net of 20 characters and spaces.

In addition, commingling currently allowed under the current mandatory COOL regulations would no longer be available under the proposed amendments. For example, the current regulations allow muscle cut covered commodities derived from animals born, raised, and slaughtered in the United States that are commingled during a production day with muscle cut covered commodities derived from animals born in one or more other countries to be designated as, for example, "Product of the United States, Country X, and Country Y" (§ 65.300(e)(2)). That type of commingling would not be allowed under the proposed amendments, as the labels must be specific as to where the animal was born, raised, and slaughtered.

The Agency's experience with the current program suggests that the majority of muscle cut covered commodities are not produced and labeled using the labeling scheme afforded by commingling. The Agency invites comment and data regarding the extent to which the flexibility afforded by commingling on a production day is used to designate the country of origin under the current COOL program and the potential costs, such as labor and capital costs, which may result from the loss of such flexibility.

Given that the information needed to label production steps is already available and that most packers already segregate animals of differing countries of origin in the slaughter and processing of those animals,[1] the most widespread cost of implementing the proposed amendments is expected to be related to label change; this cost would be incurred partially at the packing or processing facility and partially at the retail level.

In the FRIA published in the earlier COOL rulemaking (74 FR 2681), first-year incremental implementation costs for mandatory COOL were estimated at $1,755 million for the beef, pork, lamb and goat, and chicken industries. Of that total, intermediary suppliers and retailers were estimated to incur costs of $618 million and $716 million respectively, for a total of $1,334 million. Applying a Consumer Price Index deflator of 1.07 to convert to 2012 dollar values, first-year implementation costs for startup of mandatory COOL was estimated at $661 million for intermediaries, $766 million for retailers, and $1,427 million for both industry segments. AMS believes that packer and processor intermediary suppliers and retailers would be able to add the proposed specific production step information to currently required COOL designations at considerably lower cost than required for initial implementation of the current COOL regulations.

In a 2010 survey of retail meat cases, 31 percent of beef, 58 percent of pork, 60 percent of lamb, and 94 percent of chicken packages were case ready packages.[2] For retailers, products pre-labeled with production step locations would require no additional costs, as suppliers would add the production step information. Retailers offering case ready packages that do not include the production step information required under this proposed rule would need to communicate that information to consumers by some other means, such as placards or stickers. The Agency requests comment and data on the means retailers would utilize to communicate the production step information required by this proposed rule.

The estimated number of firms that would need to augment labels for muscle cut covered commodities is 2,808 livestock processing and slaughtering firms, 38 chicken

[1] For a discussion of various studies regarding the extent of segregation and commingling, see Appellate Body Reports, *US—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R, WT/DS386/R, paras. 295–310 (adopted July 23, 2012); Panel Reports, *United States—Certain Country of Origin Labelling (COOL) Requirements*, paras. 7.365, 7.403 (adopted July 23, 2012).

[2] "A Snapshot of Today's Retail Meat Case: 2010 National Meat Case Study Executive Summary," *http://www.beefretail.org/CMDocs/BeefRetail/research/2010NationalMeatCaseStudy.pdf*.

processing firms, and 4,335 retailers (Table 1). This totals 7,181 firms that would need to augment the mandatory COOL information presented on labels for muscle cut covered commodities.

Cost estimates provided in a March 2011, Food and Drug Administration (FDA) report [3] represent one possible approach for estimating the cost of including the additional production step information to currently required COOL labels for muscle cut covered commodities. There are limitations, however, to the applicability of the FDA label cost model to the task faced by retailers in informing consumers of the production step locations as proposed herein.

Importantly, the FDA model was developed for all products subject to FDA regulation, which includes not only food, but cosmetics, dietary supplements, over-the-counter medications, pet foods, retail medical devices, and tobacco products and accessories. Most of the products covered by these categories are sold in fixed-volume or fixed-quantity packages that are labeled by the manufacturer, processor, or distributor, with no additional labeling added by the retailer.

However, this proposed rule covers muscle cut covered commodities, which notably fall outside of FDA's jurisdiction (and are not included within the model). As noted previously, unlike the FDA covered commodities, a significant percentage of muscle cut covered commodities are sold in random-weight packages, with the final weight and price label applied by the retailer. Typically, retailers use a label printing scale with a thermal dot printer to apply the unit price, weight, total price, and other information such as the product name, sell by date, and so forth on pressure-sensitive paper labels that are applied to packages prior to sale. This important difference between the products covered by this rule and the products contemplated by FDA in creating its model indicates to the AMS that it would be inappropriate to rigidly adhere to the model for purposes of this analysis, as such an application of the model will overestimate the label change costs of this rule.

Nevertheless, despite these important limitations, the Agency does consider that the FDA model, with some qualifications can contribute to an assessment of the potential impacts of the proposed requirements. In the context of the FDA model, the proposed labeling change is assumed to be a minor change in which only one color is affected and the label does not need to be redesigned. Examples of a minor label change include the addition of a toll-free number, or more pertinent in this case, minimal changes to a claim on the back or side of a package affecting one color.

Based on 2009 data, the Food Safety and Inspection Service (FSIS) estimated there were approximately 121,350 raw meat and poultry unique labels submitted by official establishments and approved by the Agency (76 FR 44862). This number would represent an upper bound on the number of unique labels that would be affected by this proposed rule, as there are raw meat and poultry products that are exempt from COOL requirements, (such as a teriyaki flavored pork loin and other processed food items as defined by § 65.220) or that are not affected by this proposed rule (such as turkey), and that are not sold at retail establishments (such as products sold to hotels, restaurants, and institutional customers). The Agency welcomes data that would account for such products and thus allow for refinement of the estimate of the number of labels affected by the proposed rule.

Label changes in the FDA model fall on a spectrum from being uncoordinated, in which the label change does not correspond to a planned change, or coordinated, in which the label change corresponds with a planned change. The model predicts that coordinated label changes incur lower costs compared to uncoordinated changes. The Agency recognizes that costs estimates under the FDA model are greatly affected by the time over which required labeling changes are phased in. In the case of food products under the FDA model, any compliance period of less than 12 months is assumed to be an uncoordinated change, with 100 percent coordinated changes assumed to require at least 24 months for branded foods and 42 months for private label foods. The model predicts that coordinated label changes incur significantly lower costs compared to uncoordinated changes.

For the reasons explained above, the Agency does not believe that the rigid application of the FDA model will accurately predict the costs of this rule. In particular, the Agency does not consider that the distinction between coordinated and uncoordinated label changes as applied in the FDA label cost model is predictive of the costs of this rule. Rather, the Agency preliminarily estimates that label changes proposed in this rule will create costs that correspond to a coordinated change, even if the Agency ultimately decides to require a phase in that is considerably shorter than 12 months, which the FDA model assumes is a 100 percent uncoordinated label change.

Under the FDA model, one-time costs for a coordinated label change are assumed to involve only administrative labor costs and recordkeeping. However, as previously discussed, no additional recordkeeping costs are anticipated from this proposed rule. The midpoint estimate of administrative labor cost for a coordinated label change is $270, with a range of $140–$390. For an uncoordinated label change, the model includes administrative labor costs, non-administrative labor costs, materials costs that vary with the type of material and printing method, and recordkeeping costs. Again, no additional recordkeeping costs are anticipated from this proposed rule, and therefore the Agency considers that the model's predictions regarding uncoordinated label changes would significantly overstate the costs of the label change proposed here. As a point of reference, depending on the printing method, low estimates for coordinated change under the FDA model range from $1,990 to $2,940; midpoint estimates range from $3,690 to $4,980; and high estimates range from $6,500 to $7,890.

There are additional distinctions between the FDA model and the COOL regime to support the conclusion that the model's assumptions regarding coordinated versus uncoordinated label changes have limited applicability in this situation. As previously mentioned, COOL information already is made available to consumers under current regulations, and that information can be provided through a variety of means, including placards, signs, labels, stickers, or other formats. Thus, the Agency believes that the label changes contemplated in this proposed rule could be phased in with similar costs as predicted for a coordinated label change under the model. For instance, placards could be used to convey the augmented production step information pending synchronization with a coordinated label change cycle. Also, many, if not most, of the muscle cut covered commodities are sold as random-weight items with price, weight, and other information (including COOL information) printed for each individual package, thus allowing production step information to be provided in a similar manner. Assuming the upper bound estimate of 121,350 unique labels, the

[3] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5).

estimated midpoint cost of the proposed rule for a label change is $32,764,500 with a range of $16,989,000 to $47,326,500 million.

Note that the number of unique labels affected by this proposed rule is expected to be lower than the upper-bound estimate of 121,350, thus lowering the total estimated costs commensurately. Conversely, coordinating the proposed label changes with the current COOL requirements may involve additional costs that have not been included, which would result in higher overall costs than are estimated here.

Furthermore, compared to the current COOL program, the changes contemplated by the proposed amendments may involve ongoing activities beyond label redesign. For example, without the commingling possible under the current program, there may be a more frequent need to switch labels at processing plants that may currently commingle meat or enter different information into a label machine at a retail store when production step information changes. A given lot of carcasses or a box of meat from a production day may be of one origin, while the next lot or box may be of another origin. As previously explained, under some scenarios, under current COOL regulations, the same COOL designation can be applied to the entire day's production. Under the proposed amendments, however, the COOL designation would need to reflect the appropriate birth and raising country of origin information along with the United States location of slaughtering for individual muscle cuts of meat.

The Agency invites public comment and associated quantitative data that would improve the Agency's estimate of the cost of the changes in the labeling and commingling requirements being proposed in this rulemaking, including any additional costs that have not been included in the estimates discussed above. The Agency also invites public comment on how the length of time for compliance will affect the cost of the changes being proposed in this rule.

TABLE 1—ESTIMATED NUMBER OF AFFECTED ENTITIES, SHARE OF FIRMS BY SIZE, AND LABELING COST OF RULE REVISION *

NAICS Code	NAICS Description	Enterprise size criteria	Number of firms	Number of establishments	Share of firms by size (%)	Estimated cost of rule revision
311611	Animal (except Poultry) Slaughtering.	<500 Employees	1,504	1,518	97.6	$1,491,344
		500+ Employees	37	115	2.4	112,981
		Total	1,541	1,633		1,604,325
311612	Meat Processed from Carcasses.	<500 Employees	1,203	1,232	94.9	1,201,366
		500+ Employees	64	173	5.1	169,962
		Total	1,267	1,405		1,380,328
311615	Chicken Processing	<500 Employees	36	N/A	94.7	N/A
		500+ Employees	2	N/A	5.3	N/A
		Total	38	156		153,261
445110	Supermarkets and Other Grocery (except Convenience) Stores, Sales >$5,000,000.	<$50,000,000 Sales	4,106	6,050	95.0	5,943,762
		$50,000,000+ Sales	217	19,846	5.0	19,497,504
		Total	4,323	25,896		25,441,266
452910	Warehouse Clubs and Supercenters.	<$50,000,000 Sales	0	0		
		$50,000,000+ Sales	12	4,260	100.0	4,185,194
		Total	12	4,260		4,185,195
		GRAND TOTAL	7,181	33,350		32,764,500

*We assume that each establishment, regardless of size or industry, incurs the average estimated label revision cost per establishment = $982.44. Numbers may not sum due to rounding.

SOURCE: 2007 County Business Patterns and 2007 Economic Census.

Initial Regulatory Flexibility Analysis

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The purpose of the RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this rule will have a relatively small economic impact on a substantial number of small entities. As such, the Agency has prepared the following initial regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to section 603 of the RFA.

As mentioned in the summary above, this rulemaking was contemplated after the Agency reviewed the overall regulatory program in light of the WTO's finding that the current mandatory COOL measure is inconsistent with the United States' WTO obligations. The objective of this proposed rulemaking is to amend current mandatory COOL requirements to provide consumers with information on the country in which productions steps occurred for muscle cut covered

commodities, thus fulfilling the program's objective of providing consumers with information on origin. The legal basis for the mandatory COOL regulations is Subtitle D of the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1638 et seq.).

Under preexisting Federal laws and regulations, origin designations for muscle cut covered commodities need not specify the production steps of birth, raising, and slaughter of the animals from which the cuts are derived. Thus, the Agency has not identified any Federal rules that would duplicate or overlap with this rule.

We do not anticipate that additional recordkeeping will be required or that new systems will need to be developed to transfer information from one level of the production and marketing channel to the next. However, information available to consumers at retail will need to be augmented to include information on the location in which the three major production steps occurred. Therefore, the companies most likely to be affected are packers and processors that produce case-ready products, and retailers.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: sales receipts or number of employees.[4] In terms of sales, SBA classifies as small those grocery stores with less than $30 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than $30 million in annual sales are also defined as small. SBA defines as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. In fact, food stores, warehouse clubs, and superstores account for 75.6 percent of all food consumed at home.[5] Therefore, the number of these stores provides an indicator of the number of entities potentially affected by this rule. The 2007 Economic Census[6] shows there were 4,335 supermarkets and grocery stores (not including convenience stores), warehouse clubs, and superstore firms operated for the entire year with annual sales exceeding $5,000,000 (Table 1). We assume that stores with overall sales above this threshold would be most likely to be subject to the PACA and therefore subject to mandatory COOL and the proposed amendments. We recognize that there may be retail firms, particularly smaller retail firms, subject to PACA but that do not actually hold a PACA license. Therefore, a lower annual sales threshold may be appropriate for estimating the number of retailers subject to PACA. However, the $5,000,000 threshold provides estimated firm and establishment numbers that are generally consistent with the PACA database listing licensed retailers.

The 2007 Economic Census data provide information on the number of food store firms by sales categories. Of the 4,335 food store, warehouse club, and superstore firms with annual sales of at least $5,000,000, an estimated 4,106 firms had annual sales of less than $50,000,000, which is higher than the threshold for the SBA definition of a small firm. The Economic Census data do not provide a breakout at the $30,000,000 SBA threshold, which means that the estimated number of small businesses likely is an overestimate.

We estimate that 33,350 establishments owned by 7,181 firms will be either directly or indirectly affected by this rule (Table 1). Of these establishments/firms, we estimate that 6,849 qualify as small businesses. The mid-point total direct incremental costs are estimated for the proposed rule at approximately $32.8 million. The direct incremental costs of the proposed rule are the result of revisions in labeling of muscle cut covered commodities. Of the total labeling costs of $32.8 million, $8.6 million is estimated to be costs borne by small businesses.

Small retailers' portion of these costs is estimated at $5.9 million. Mid-point estimated costs are $982 per retail establishment.

Any manufacturer that supplies retailers or wholesalers with a covered commodity will be required to provide revised country of origin information to retailers so that the information can be accurately supplied to consumers. Of the manufacturers potentially affected by the rule, SBA defines those having less than 500 employees as small.

The 2007 Economic Census[7] provides information on manufacturers by employment size. For livestock processing and slaughtering there is a total of 2,808 firms (Table 1). Of these, 2,707 firms have less than 500 employees. This suggests that 96 percent of livestock processing and slaughtering operations would be considered as small firms using the SBA definition. For chicken processing there are a total of 38 firms, only two of which are classified as small. Thus, only 5 percent of the chicken processors are small businesses.

Small packer and processor labeling costs under the proposed rule are estimated at $2.7 million. As with retailers, labeling costs are estimated at $982 per establishment.

The Agency seeks comment on the accuracy of these estimates and the impacts on small businesses that may not be captured using the label cost model discussed above.

Alternatives considered: Section 603 of the RFA requires the Agency to describe the steps taken to minimize any significant economic impact on small entities including a discussion of alternatives considered. The law explicitly identifies those retailers required to provide their customers with country of origin information for covered commodities (namely, retailers subject to PACA). Thus, the proposed amendments are consistent with the requirements of the Act in terms of who is subject to the proposed rule.

The proposed change in the definition of a retailer is not expected to have a substantial effect on the number of retailers subject to COOL requirements. The PACA program continually monitors the retail industry for firms that may meet the threshold for PACA licensing and seeks to enforce compliance with those requirements. Thus, those retailers that are required to hold a PACA license should, in fact, be licensed separate and apart from any COOL program requirements.

The Agency considered other alternatives including taking no action or providing less information than is currently required under the COOL regulations. These alternatives would not achieve the purpose of this rulemaking.

As with the current mandatory COOL program, the proposed rule has no requirements for firms to report to USDA. Compliance audits will be conducted at firms' places of business. There are no recordkeeping requirements beyond those currently in place, and we believe that the information necessary to transmit production step information largely is already in place within the affected industries. As stated in the RFA of the COOL final rule, the current COOL

[4] Small Business Administration. *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf.*

[5] ERS, USDA, Food CPI, Prices and Expenditures: Sales of Food at Home by Type of Outlet. *http://www.ers.usda.gov/Briefing/CPIFoodAndExpenditures/Data/table16.htm.*

[6] U.S. Census Bureau, 2007 Economic Census, Retail Trade Subject Series, Establishment and Firm Size, EC0744SSSZ4 and, Issued January 2013.

[7] U.S. Census Bureau, 2007 Economic Census, Historical Data Tabulations by Enterprise Size, 2007 Annual Tabulations; U.S., All Industries, *http://www.census.gov/econ/susb/data/susb2007.html.*

requirements provide the maximum flexibility practicable to enable small entities to minimize the costs on their operations. This proposed rule in large measure retains these flexibilities. In addition, small packers, processors, and retailers are expected to produce and stock a smaller number of unique muscle cut covered commodities compared to large operations. Thus, labeling costs for small establishments likely will be lower than the estimated mid-point average of $982 for all establishments.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C 3501–3520) the information collection provisions contained in this rule were previously approved by OMB and assigned OMB Control Number 0581–0250. On December 4, 2012, AMS published a notice and request for comment seeking OMB approval to revise this information collection. The comment period closed on February 4, 2013. This proposed rule does not change these provisions.

Executive Order 12988

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and these regulations. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This program is required by the 2002 Farm Bill, as amended by the 2008 Farm Bill.

In the January 15, 2009, final rule, the Federalism analysis stated that to the extent that State country of origin labeling programs encompass commodities that are not governed by the COOL program, the States may continue to operate them. It also contained a preemption for those State country of origin labeling programs that encompass commodities that are governed by the COOL program. This proposed rule does not change the preemption. With regard to consultation with States, as directed by the Executive Order 13132, AMS previously consulted with the States that have country of origin labeling programs. AMS has cooperative agreements with all 50 States to assist in the enforcement of the COOL program and has communications with the States on a regular basis.

Because the United States wants to provide more specific information to the consumer at the earliest possible date, and consequently to bring COOL into compliance with the WTO ruling by May 23, 2013, the Agency has determined that a 30-day comment period is appropriate.

For the reasons set forth in the preamble, 7 CFR part 60 is proposed to be amended as follows:

PART 60—COUNTRY OF ORIGIN LABELING FOR FISH AND SHELLFISH

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Section 60.124 is revised to read as follows:

§ 60.124 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

For the reasons set forth in the preamble, 7 CFR part 65 is proposed to be amended as follows:

PART 65—COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, CHICKEN, GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, PECANS, PEANUTS, AND GINSENG

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Section § 65.240 is revised to read as follows:

§ 65.240 Retailer.

Retailer means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

§ 65.300 [Amended]

■ 3. Section 65.300 paragraphs (d), (e), and (f) are revised to read as follows:

(d) *Labeling Covered Commodities of United States Origin.*

A covered commodity may bear a declaration that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin as defined in § 65.260. The United States country of origin designation for muscle cut covered commodities shall include all of the production steps (i.e., "Born, Raised, and Slaughtered in the United States").

(e) *Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin from Animals Slaughtered in the United States.*

If an animal was born and/or raised in Country X and/or (as applicable) Country Y, and slaughtered in the United States, the resulting muscle cut covered commodities shall be labeled to specifically identify the production steps occurring in each country (e.g., "Born and Raised in Country X, Slaughtered in the United States"). If an animal is raised in the United States as well as another country (or multiple countries), the raising occurring in the other country (or countries) may be omitted from the origin designation except if the animal was imported for immediate slaughter as defined in § 65.180 or where by doing so the muscle cut covered commodity would be designated as having a United States country of origin (e.g., "Born in Country X, Raised and Slaughtered in the United States" in lieu of "Born and Raised in Country X, Raised in Country Y, Raised and Slaughtered in the United States").

(f) *Labeling Imported Covered Commodities.*

(1) Perishable agricultural commodities, peanuts, pecans, ginseng, macadamia nuts and ground meat covered commodities that have been

produced in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale.

(2) Muscle cut covered commodities derived from an animal that was slaughtered in another country shall retain their origin, as declared to U.S. Customs and Border Protection at the time the product entered the United States, through retail sale (e.g., "Product of Country X"), including muscle cut covered commodities derived from an animal that was born and/or raised in the United States and slaughtered in another country. In addition, the origin declaration may include more specific location information related to production steps (i.e., born, raised, and slaughtered) provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.

Dated: March 7, 2013.

Robert Epstein,

Acting Administrator.

[FR Doc. 2013–05576 Filed 3–11–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 429

Notice of Intent To Form the Commercial HVAC, WH, and Refrigeration Certification Working Group and Solicit Nominations To Negotiate Commercial Certification Requirements for Commercial HVAC, WH, and Refrigeration Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is giving notice that the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) intends to establish a working group in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate certification requirements of commercial heating, ventilation, and air-conditioning (HVAC), water heating (WH), and refrigeration equipment. The purpose of the working group will be to discuss and, if possible, reach consensus on proposed certification requirements for commercial HVAC, WH, and refrigeration equipment, as authorized by the Energy Policy and Conservation Act of 1975, as amended. The working group members will be representatives of parties having a defined stake in the outcome of the proposed certification requirements, and will consult with a range of experts on technical issues.

DATES: Nominations of membership must be received on or before March 26, 2013. DOE will not consider any nominations received via mail or after midnight on March 26, 2013 to be valid.

ADDRESSES: The nominee's name, resume, biography, and any letters of support must be submitted in electronic format via email to *asrac@ee.doe.gov*. Any requests for further information should also be sent via email to *asrac@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza, SW., Washington, DC 20024. Email: *asrac@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended ("EPCA" or "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. See 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

This notice announces DOE's and the ASRAC's intent to negotiate certification requirements of commercial heating, ventilation, and air-conditioning (HVAC), water heating (WH), and refrigeration equipment under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320).

II. Background

On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (March 2011 Final Rule). 76 FR 12421. This rule, among other things, imposed new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. In issuing the rule, the Department emphasized that manufacturers could use their discretion in grouping individual models as a "basic model" such that the certified rating for the basic model matched the represented rating for all included models. See 76 FR 12428–12429 for more information.

In response to the initial deadline for certifying compliance imposed on commercial HVAC, WH, and refrigeration equipment manufacturers by the March 2011 Final Rule, certain manufacturers of particular types of commercial and industrial equipment stated that, for a variety of reasons, they would be unable to meet that deadline. DOE initially extended the deadline for certifications for commercial HVAC, WH, and refrigeration equipment in a final rule published June 30, 2011 (June 30 Final Rule). 76 FR 38287 (June 30, 2011). DOE subsequently extended the compliance date for certification an additional 12 months to December 31, 2013, for these types of equipment (December 2012 final rule) to allow, among other things, the Department to explore the negotiated rulemaking process for this equipment. 77 FR 72763.

In the summer of 2012, DOE had an independent convenor evaluate the likelihood of success, analyzing the feasibility of developing certification requirements for commercial HVAC, WH, and refrigeration equipment (not including walk-in coolers and freezers) through consensus-based negotiations among affected parties. October 2012, the convenor issued his report based on a confidential interview process involving forty (40) parties, from a wide range of commercial HVAC, WH, and CRE interests. Ultimately, the convener recommended that with the proper scope of issues on the table surrounding

commercial HVAC, WH, and CRE certification, a negotiated rulemaking appears to have a good likelihood of achieving consensus based on the factors set forth in the Negotiated Rulemaking Act because the interviewed parties believe the negotiated rulemaking is superior to notice and comment rulemaking for the certification-related issues. Additional details of the report can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre_1.pdf.*

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

DOE has identified the following substantive issues that will underlie the work of the Commercial HVAC, WH, and Refrigeration Certification Working Group:

- Strategies for grouping models for purposes of certification;
- Identification of non-efficiency attributes, which do not impact the measured consumption of the equipment as tested by DOE's test procedure;
- The information that is certified to the Department;
- The timing of when the certification should be made relative to distribution in commerce; and
- Alterations to a basic model that would impact the certification.

The formed working group will examine the underlying issues outlined above, and possibly others not yet articulated as determined through the negotiated rulemaking process. As voted on by ASRAC, the working group will be required to provide a progress report to ASRAC on its efforts by Wednesday, June 26, 2013, and report back to the Committee with final recommendations by Friday, August 30, 2013.

B. Formation of Working Group

A working group will be formed and operated in full compliance with the requirements of FACA and in a manner consistent with the requirements of the NRA. In accordance with NRA, DOE has determined that the working group not exceed 25 members. DOE is aware that there are many more potential participants than there are membership slots on the working group. The Department does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, those coalitions must agree to support, both financially and technically, a member of the working group whom they choose to represent their interests. FACA also requires that members of the public have the opportunity to attend meetings of the full committee and speak or otherwise address the committee during the public comment period. In addition, any member of the public is permitted to file a written statement with the advisory committee. DOE plans to follow these same procedures in conducting meetings of the working group.

C. Interests Involved/Working Group Membership

DOE anticipates that the working group will comprise no more than 25 members who represent affected and interested stakeholder groups, two of whom will be members of ASRAC—John Mandyck and Kent Peterson. Additionally, in accordance with NRA, one seat on the working group will be reserved for a DOE representative to represent the views of the Department. As required by FACA, the Department will conduct the negotiated rulemaking with particular attention to ensuring full and balanced representation of those interests that may be significantly affected by certification requirements of commercial HVAC, WH, and refrigeration equipment.

Members may be individuals or organizations. If the effort is to be fruitful, participants on the working group should be able to fully and adequately represent the viewpoints of their respective interests. This document gives notice of DOE's process to other potential participants and affords them the opportunity to request representation in the negotiations. Those who wish to be appointed as members of the working group, including those that have been tentatively identified by DOE in this notice of intent, should submit a request to DOE, in accordance with the public participation procedures outlined in the **DATES** and **ADDRESSES** sections of this notice of intent. Membership of the working group is likely to involve:

- Attendance of multiple, one (1) to two (2) day meetings;
- Travel costs to those meetings; and
- Preparation time for those meetings.

Members serving on the working group will not receive compensation for their services. Interested parties who are not selected for membership on the working group may make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person may request to be placed on the working group mailing list and submit written comments as appropriate.
- The person may attend working group meetings, which are open to the public; caucus with his or her interest's member on the working group; or even address the working group during the public comment portion of the working group meeting.
- The person could assist the efforts of a task force that the working group might establish.

A working group may establish informal task forces, which usually are asked to facilitate committee deliberations by assisting with various technical matters (e.g., researching or preparing summaries of the technical literature or comments on specific matters such as economic issues). Task forces also might assist in estimating costs or drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, or formulating drafts of the various provisions and their justifications as previously developed by the working group. Given their support function, task forces usually consist of participants who have expertise or particular interest in the technical matter(s) being studied. Because it recognizes the importance of this support work for the working group, DOE will provide appropriate technical expertise for such task forces.

D. Good Faith Negotiation

Every working group member must be willing to negotiate in good faith and have the authority, granted by his or her constituency, to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition therefore should designate as its representative a person having the credibility and authority to ensure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking can require the appointed members to give a significant amount of time, which must be sustained for as long as the duration of the negotiated rulemaking. Other qualities of members that can be helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the

willingness to bring all issues to the bargaining table in an attempt to reach a consensus, as opposed to keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from some of the positions often taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the working group's discussions.

E. Facilitator

The facilitator will act as a neutral in the substantive development of the proposed standard. The facilitator's role generally includes:

- Impartially assisting the members of the working group in conducting discussions and negotiations; and
- Impartially assisting in performing the duties of the Designated Federal Official under FACA.

F. Department Representative

The DOE representative will be a full and active participant in the consensus-building negotiations. The Department's representative will meet regularly with senior Department officials, briefing them on the negotiations and receiving their suggestions and advice so that he or she can effectively represent the Department's views regarding the issues before the working group. DOE's representative also will ensure that the entire spectrum of governmental interests affected by the rulemaking, including the Office of Management and Budget, the Attorney General, and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Working Group and Schedule

After evaluating the comments submitted in response to this notice of intent and the requests for nominations, DOE will inform the members of the working group that they have been selected. DOE and ASRAC plan for the working group to have its first meeting in April 2013 and have determined a need for an update from the working group on negotiation efforts by Wednesday, June 26, 2013, and final recommendations to ASRAC by Friday, August 30, 2013.

At the initial working group meeting, DOE and ASRAC representatives on the working group will advise working group members of administrative matters related to the functions of the working group, lay out the working group's scope, and confirm deadlines. Given the outlined scope and established deadlines, the working group will develop a work plan to accomplish the proposed objectives. While the negotiated rulemaking process is underway, DOE is committed to performing much of the same analysis as it would during a normal process and to providing information and technical support to the working group.

IV. Nominations Requested

DOE requests nominations of which parties should be included in a negotiation efforts of certification requirements of commercial HVAC, WH, and refrigeration equipment and suggestions of additional interests and/or stakeholders that should be represented on the working group. Please include the nominee's name, contact information, resume, biography, and any letters of support. Nominations must be submitted in electronic format via email to *asrac@ee.doe.gov*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

Issued in Washington, DC, on March 5, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2013–05615 Filed 3–11–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0594; Directorate Identifier 2012–NM–019–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. That NPRM proposed to require an inspection to determine if certain rudder feel trim units (RFTUs) are installed, an operational check for signs of seizure of affected parts, repetitive lubrication for certain RFTUs, and replacement of the RFTU if necessary. Installing replaced RFTUs with conformal bushings would terminate the repetitive lubrication requirements. That NPRM was prompted by reports of movement of the rudder pedals being impeded due to corrosion of the trunnion shaft of the RFTU. This action revises that NPRM by reducing compliance times, increasing compliance costs, expanding affected parts to include additional serial numbers and include those parts with a suffix 'A,' and adding the condition of rough movement to the operational check. We are proposing this AD to detect and correct any sign of rough movement or seizure of the trunnion shaft and its bushing, which could cause a rudder control jam or a large and rapid alternating rudder input leading to a structural failure of the vertical fin. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by April 26, 2013.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, 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) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2012–0594; Directorate Identifier 2012–NM–019–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on June 12, 2012 (77 FR 34874). That earlier NPRM proposed to require actions intended to address the unsafe condition for certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes.

Since that NPRM (77 FR 34874, June 12, 2012) was issued, we have determined that a reduction to the compliance times is needed in order to address the identified specified unsafe condition. We are reducing the compliance times for the inspection in paragraph (g) of this supplemental NPRM from within 600 flight hours or six months, whichever occurs first, to within 200 flight hours or two months, whichever occurs first after the effective date of this AD. We are reducing the compliance time for the replacement specified in paragraph (h) of this supplemental NPRM from within 6,000 flight hours to within 5,000 flight hours or 3 years, whichever occurs first. We have also determined that it is necessary to increase the costs of compliance, expand the affected parts, and revise the operational check specified in the NPRM. The affected parts for the action specified in paragraphs (g)(1) and (g)(2) have been expanded in this supplemental NPRM to include additional serial numbers (S/N) 0008 through 0509 inclusive, and to include those parts with suffix 'A.' Also, the operational check specified in paragraph (g)(2) of this supplemental NPRM now includes an additional condition of "any sign of rough movement."

Since the NPRM (77 FR 34874, June 12, 2012) was issued, Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–02R1, dated October 12, 2012 (referred to after this as Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI reduced compliance times, expanded the affected parts to include the new part serial numbers and parts with suffix 'A,' and added the condition of "rough movement" to the operational check. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–27–60, dated July 12, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We gave the public the opportunity to comment on the NPRM (77 FR 34874, June 12, 2012). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Allow Additional Replacement Units

Horizon Air (Horizon) requested that we add units with suffix 'B,' in addition to units with suffix 'A,' to the RFTUs allowed as replacement parts in paragraphs (g), (h), and (i) of the NPRM (77 FR 34874, June 12, 2012). Horizon stated that Parker Aerospace, which manufacturers RFTU part number (P/N) 399500–1007, has since issued Parker Aerospace Service Bulletin 399500–27–003, dated April 19, 2012, which introduced an additional modification for RFTU (S/Ns) 0009 through 0388 inclusive. Horizon noted RFTUs modified by that service bulletin are identified by a suffix 'B' to the unit serial number. Horizon stated the addition of units with suffix 'B" would allow operators that have taken actions to incorporate Parker Aerospace Service Bulletin 399500–27–003, dated April 19, 2012, suffix 'B' units into their fleet, to be in compliance with the NPRM and to keep operators from having to request an alternative means of compliance (AMOC) to keep suffix 'B' units in service once the final rule is issued.

We partially agree with the commenter. This supplemental NPRM does allow installation of units with suffix 'B.' However, as stated previously, units with suffix 'A,' are now affected parts and this supplemental NPRM would not allow installations of units with suffix 'A.' We have changed paragraphs (g), (h), and (i) of this supplemental NPRM to include the addition of units with suffix 'B.'

Request To Revise Paragraph (g)(2)(i) of the NPRM (77 FR 34874, June 12, 2012)

Horizon requested that we revise paragraph (g)(2)(i) of the NPRM (77 FR 34874, June 12, 2012) to allow installing serviceable RFTUs and RFTUs having suffix 'B.' Horizon added that paragraph (g)(2)(i) of the NPRM requires "replacing the RFTU with a new RFTU." Horizon stated that the word 'new' implies a zero-time unit that is new from the manufacturer, and that operators should not be required to purchase a new unit to meet the requirements of paragraph (g)(2)(i) of the NPRM when a serviceable RFTU outside the serial number range, or that has a serial number with a suffix 'A,' would address the unsafe condition. Horizon pointed out that requiring use of a new unit since it adds an additional financial cost that is unnecessary to address the unsafe condition.

We agree. We have revised paragraph (g)(2)(i) of this supplemental NPRM to specify replacing RFTUs with new or serviceable RFTUs, which includes those with suffix 'B.'

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or

develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM (77 FR 34874, June 12, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $35,275, or $425 per product.

In addition, we estimate that any necessary follow-on actions would take about 17 work-hours and require parts costing $0, for a cost of $1,445 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0594; Directorate Identifier 2012–NM–019–AD.

(a) Comments Due Date

We must receive comments by April 26, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, -401, and -402 airplanes; certificated in any category; serial numbers (S/N) 4001, 4003 and subsequent, equipped with rudder feel trim unit (RFTU) part number (P/N) 399500–1007.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight Controls.

(e) Reason

This AD was prompted by reports of movement of the rudder pedals being impeded due to corrosion of the trunnion shaft of the RFTU. We are issuing this AD to detect and correct any sign of rough movement or seizure of the trunnion shaft and its bushing, which could cause a rudder control jam or a large and rapid alternating rudder input leading to a structural failure of the vertical fin.

(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) Inspection, Replacement, and Lubrication

Within 200 flight hours or two months after the effective date of this AD whichever occurs first: Inspect the RTFU to determine whether the serial number is in the range from S/N 0008 through 0509 inclusive without a suffix 'B,' in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–60, dated July 12, 2012. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the RFTU can be conclusively determined from that review.

(1) If the RFTU's serial number is not in the range from S/N 0008 through 0509 inclusive, or if the serial number has a suffix 'B,' no further action is required for this paragraph.

(2) If the RFTU's serial number is in the range from (S/N) 0008 through 0509 inclusive, including those with a suffix 'A,' but not including those with suffix 'B': Before further flight, perform an operational check of the RFTU for any sign of rough movement or seizure of the trunnion or center shaft, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–60, dated July 12, 2012.

(i) If rough movement or seizure of the RFTU trunnion or center shaft is found: Before further flight, replace the RFTU with a new or serviceable RFTU, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–60, dated July 12, 2012.

(ii) If no rough movement or seizure of the RFTU trunnion or center shaft is found: Before further flight, lubricate the RFTU, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–60, dated July 12, 2012. Repeat the lubrication of the RFTU at intervals not to exceed 600 flight hours or 3 months, whichever occurs first, until the RFTU is replaced with a unit that has a serial number outside the affected range or a serial number with a suffix 'B.'

(h) Replacement

For airplanes having an RFTU identified in paragraph (g)(2) of this AD: Except as required by paragraph (g)(2)(i) of this AD, within 5,000 flight hours or 3 years after the effective date of this AD, whichever occurs first, replace all affected RFTUs with units that have a serial number outside the range from S/Ns 0008 through 0509 inclusive, or

that have a serial number with a suffix 'B,' in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–60, dated July 12, 2012.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an RFTU P/N 399500–1007 with a serial number from (S/N) 0008 through 0509 inclusive, including serial numbers with suffix 'A,' on any airplane, except RFTUs that have a serial number with suffix 'B,' may be installed.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–02R1, dated October 12, 2012; and Bombardier Service Bulletin 84–27–60, dated July 12, 2012; for related information.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05597 Filed 3–11–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0206; Directorate Identifier 2012–NM–068–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727 airplanes. This proposed AD was prompted by reports of spanwise cracks and corrosion in the wing center box upper skin and rear spar upper chord between left buttock line (LBL) 70.50 and right buttock line (RBL) 70.50 at body station (STA) 870. This proposed AD would require repetitive inspections of the wing center box for cracking around certain fastener rows on the rear spar upper chord horizontal flange; for certain airplanes, repetitive inspections for cracking of the rear spar upper chord radius; for certain other airplanes, repetitive inspections for damage, cracking, and corrosion of the pressure seal; and repair if necessary. We are proposing this AD to detect and correct cracking and corrosion of the upper skin and rear spar upper chord of the wing center box, which could result in loss of the airplane wing and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by April 26, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed 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 Ave 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6577; fax: (425) 917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0206; Directorate Identifier 2012–NM–068–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of spanwise cracks and corrosion in the wing center box upper skin and rear spar upper chord between LBL 70.50 and RBL 70.50 at STA 870. The crack sizes ranged from 0.125 inches to 12 inches. The airplanes had accumulated between 31,679 and 61,359 total flight hours and between 17,754 and 58,796 total flight

cycles. Analysis has shown that the cracks are a result of stress corrosion. This condition, if not detected and corrected, could result in loss of the airplane wing and consequent loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0206.

Related Rulemaking

AD 2005–05–19, Amendment 39–14008 (70 FR 12120, March 11, 2005; corrected March 17, 2005 (70 FR 13074)), requires repetitive detailed inspections to detect cracking, corrosion, minor surface defects, and existing stop-drilled repairs of cracks in the upper and lower chords of the front and rear spars of the wing; and repair if necessary. Those required actions are for locations between buttock line 70.5 and the wing tip (i.e., left and right wings). This proposed AD would require actions between the LBL 70.5 and RBL 70.5 of the rear spar upper chord and upper skin at STA 870 (i.e., center wing).

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

The phrase "related investigative actions" might be used in this proposed AD. "Related investigative actions" are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase "corrective actions" might be used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 98 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	67 work-hours × $85 per hour = $5,695 per inspection cycle.	$0	$5,695 per inspection cycle	$558,110 per inspection cycle

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0206; Directorate Identifier 2012–NM–068–AD.

(a) Comments Due Date

We must receive comments by April 26, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of spanwise cracks and corrosion in the wing center box upper skin and rear spar upper chord between left buttock line (LBL) 70.50 and right buttock line (RBL) 70.50 at body station (STA) 870. We are issuing this AD to detect and correct cracking and corrosion of the upper skin and rear spar upper chord of the wing center box, which could result in loss of the airplane wing and consequent loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Except as specified in paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012; Inspect the wing center box between LBL 70.50 and RBL 70.50, at STA 870, as specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012. If any crack, corrosion, or damage is found during any inspection required by this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(1) Do a high frequency eddy current (HFEC) or detailed inspection for cracking around the forward fastener row in the rear spar upper chord horizontal flange.

(2) Do a low frequency eddy current inspection for cracking around the aft fastener row in the rear spar upper chord horizontal flange.

(3) Do a detailed or HFEC inspection for cracking in the rear spar upper chord radius.

(4) Do a detailed or HFEC inspection for cracking in the upper skin around the forward fastener row common to the rear spar upper chord horizontal flange.

(5) Do a detailed inspection for damage, cracking, and corrosion in the pressure seal.

(h) Exception to the Service Information

Boeing Special Attention Service Bulletin 727–57–0187, dated March 8, 2012, specifies compliance times "after the original issue date of this service bulletin." However, this AD requires compliance within the specified compliance times "after the effective date of this AD."

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6577; fax: (425) 917–6590; email: *berhane.alazar@faa.gov.*

(2) 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 Ave SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–05598 Filed 3–11–13; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2013–0010]

16 CFR Part 1500

Hazardous Substances and Articles; Supplemental Definition of "Strong Sensitizer"

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC or Commission) proposes to update the supplemental definition of "strong sensitizer" under the Federal Hazardous Substances Act (FHSA). The proposed amendment clarifies or adds language to eliminate redundancy, remove certain subjective factors, incorporate new and anticipated technology, rank the criteria for classification of strong sensitizers in order of importance, define criteria for "severity of reaction," and indicate that a weight-of-evidence approach will be used to determine the strength of the sensitizer.

DATES: Written comments must be received by May 28, 2013.

ADDRESSES: You may submit comments identified by Docket No. CPSC–2013–0010, by any of the following methods:

• Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *www.regulations.gov.*

• Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically.

Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joanna Matheson, Ph.D., Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2564; *jmatheson@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The FHSA, 15 U.S.C. 1261–1278, requires appropriate cautionary labeling on certain hazardous household products to alert consumers to the potential hazards that a product may present. Among the hazards addressed by the FHSA are products that are toxic, corrosive, irritants, flammable, combustible, or strong sensitizers.

Included within the FHSA's definition of "hazardous substance" is "any substance or mixture of substances" that "is a strong sensitizer," 15 U.S.C. 1261(f)(1)(iv). Section 2(k) of the FHSA, 15 U.S.C. 1261(k), defines "strong sensitizer" as:

> A substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Commission. Before designating any substance a strong sensitizer, the Commission, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

On August 12, 1961, the Food and Drug Administration (FDA) (which at that time administered the FHSA), issued regulations under the FHSA that supplemented the statutory definition of "strong sensitizer." The regulations also provided a list of substances that the FDA had determined met the statutory definition for "strong sensitizer." The five substances identified were: (1) Paraphenylenediamine and products containing it; (2) powdered orris root and products containing it; (3) epoxy resins systems containing in any concentration ethylenediamine, diethylenetriamine, and diglycidyl ethers of molecular weight less than 200; (4) formaldehyde and products containing 1 percent or more of formaldehyde; and (5) oil of bergamot and products containing 2 percent or more of oil of bergamot. No additional substances have been determined to be "strong sensitizers" by the FDA or the Commission since promulgation of this regulation.

In 1973, the responsibility for the administration of the FHSA was transferred to the Commission, and the supplemental definition of "strong sensitizer" was published in title 16 of the Code of Federal Regulations. On May 30, 1984, the Commission revoked the above supplemental definition of "strong sensitizer." 49 FR 22464. The Commission concluded at that time that the statutory definition of "strong sensitizer" was adequate for any future regulatory determination that a substance is a strong sensitizer.

On August 14, 1986, the Commission issued a rule supplementing the definition of "strong sensitizer" in the FHSA. 51 FR 29094, which currently is in effect. 16 CFR 1500.3(c)(5). As recommended by a Technical Advisory Panel on Allergic Sensitization (TAPAS), the supplemental definition clarifies how the statutory definition should be interpreted and explains the factors the Commission will consider in determining whether a substance is a "strong sensitizer." The supplemental definition states that an "allergic" response is one that is directed by the immune system, such that a sensitization reaction could not be caused by an irritant or other nonallergenic qualities of the substance. The supplemental definition also clarifies that active sensitizers—substances that produce a sensitivity reaction solely as the result of a person's first exposure to the substance as opposed to after reapplication of the same substance—are included within the class of substances that can be determined to be strong sensitizers. The supplemental definition did not address strong sensitizers that cause hypersensitivity by a photodynamic process, principally because Commission staff was unaware of any household product subject to the FHSA that would cause significant exposure of consumers to a photodynamic chemical.

The current supplemental definition makes clear that a sensitivity reaction could occur after the sensitizer is applied to the body's tissues by contact, ingestion, or inhalation; that relevant exposure is not limited to skin contact; and that targets for hypersensitivity reactions include the skin and other organ systems, such as the respiratory or gastrointestinal tracts, either alone or in combination. The supplemental definition states that the minimal severity of the reaction caused by the substance for purposes of determining whether the substance is a strong sensitizer is a clinically important allergic reaction and provides examples of such clinically important reactions. Whether a substance has a significant potential for causing hypersensitivity is a relative determination that must be made separately for each substance under consideration by the Commission. The supplemental definition sets forth the criteria to be considered in making this determination. Finally, the supplemental definition provides the quantitative and qualitative factors that the Commission should consider in determining that a substance is a "strong" sensitizer, such as the frequency of occurrence and range of severity in normal and susceptible populations and the results of experimental assays in humans and animals.

Recognizing that the science on sensitization has changed since promulgation of the supplemental definition in 1986, the CPSC convened a panel of scientific experts from academia, industry, and the federal government to examine the available scientific and medical information concerning sensitizers, and if appropriate, propose revisions to the supplemental definition of strong sensitizer.

B. Effect of Strong Sensitizer Determination

The Commission is proposing to revise its supplemental definition of strong sensitizer. Additional Commission action would be needed for any substance to be designated a strong sensitizer. In order for the Commission to issue a rule declaring any particular substance (or product containing that substance) to be a strong sensitizer, it must engage in notice and comment rulemaking, separate from this rulemaking, and make the findings specified in 15 U.S.C. 1261(k), *i.e.*, that based upon consideration of the frequency of occurrence and the severity of the reaction, the substance has a significant potential for causing hypersensitivity. However, a determination that a substance is a strong sensitizer does not automatically trigger a labeling requirement for products containing that substance. Under the FHSA a substance (or product containing that substance) that is a hazardous substance requires appropriate labeling. 15 U.S.C. 1261(p). If manufacturers of products containing a designated strong sensitizer determine that the strong sensitizer in their products may cause substantial injury or illness as a result of reasonably foreseeable handling or use, that product would be a "hazardous substance" as defined under the FHSA, and therefore would warrant

appropriate labeling. Alternatively, where there is uncertainty, the Commission has the option under section 3(a)(1) of the FHSA to determine through notice and comment rulemaking that a product containing a strong sensitizer is a "hazardous substance." Hazardous substances intended or packaged in a form suitable for use in the household that do not bear the appropriate cautionary labeling would be considered "misbranded" in violation of the FHSA. 15 U.S.C. 1261(p).

Such cautionary labeling would be insufficient, however, if a toy or other article intended for the use of children is, bears, or contains a hazardous substance (as that term is defined in section 2(f) of the FHSA), and the hazardous substance is accessible to a child to whom the article is entrusted. Under that scenario, the toy or children's article would be considered a "banned hazardous substance" under section 2(q)(1)(A) of the FHSA unless a particular exemption applies. 15 U.S.C. 1261(q)(1)(A).

C. Proposed Amendment

The proposed amendment to 16 CFR part 1500 clarifies or adds language to the supplemental definition of "strong sensitizer" to eliminate redundancy, remove certain subjective factors, incorporate new and anticipated technology, rank the criteria for classification of strong sensitizers in order of importance, define criteria for "severity of reaction," and indicate that a weight-of-evidence approach will be used to determine the strength of the sensitizer.

1. *Definition of sensitizer.* The current definition of *sensitizer* in § 1500.3(c)(5) is, "a substance that will induce an immunologically-mediated (allergic) response, including allergic photosensitivity. The allergic reaction will become evident upon reexposure to the same substance. Occasionally, a sensitizer will induce and elicit an allergic response on first exposure by virtue of active sensitization."

The proposed amendment reflects the traditional definition for sensitization; sensitization is a multi-stage immune mediated process which occurs over a period of time. Under the proposed amendment, those substances that sensitize through atypical mechanisms, rather than by inducing an obvious "immunologically-mediated response" will be captured by the assessment process. The proposed amendment also eliminates the last sentence of the current definition based on concerns that it may be misinterpreted such that substances that cause an irritant response only [1] (the response that is noted after the first exposure to a substance is more frequently an irritant response and not an allergic response) could be erroneously included in the category of "strong sensitizers." Typically, allergic responses are the result of a two-step process: (1) Induction (sensitization) which requires sufficient or cumulative exposure to induce an immune response with few or no symptoms and (2) elicitation when an individual who has been sensitized demonstrates symptoms upon subsequent exposures. The phrase "variable period of exposure" is included in the proposed amendment to reflect the latency period which is a characteristic in the development of sensitization.

2. *Definition of significant potential for causing hypersensitivity.* Currently, 16 CFR 1500.3(c)(5)(iv) provides that " 'significant potential for causing hypersensitivity' is a relative determination that must be made separately for each substance. It may be based upon the chemical or functional properties of the substance, documented medical evidence of allergic reactions obtained from epidemiological studies surveys or individual case reports, controlled *in vitro* or *in vivo* experimental assays, or susceptibility profiles in normal or allergic subjects."

The proposed revision to this section reiterates the statutory requirement that before designating any substance a "strong" sensitizer, the Commission must find that the substance has significant potential for causing hypersensitivity. The proposed revision adds qualifiers for susceptibility profiles—genetics, age, gender, and atopic status— to the list of information or data that may be considered in determining whether a substance has a significant potential for causing hypersensitivity; and the proposed revision also replaces the term "normal" with "non-sensitized." These characteristics are well-known modifiers in the development and exacerbation of allergic responses to chemical sensitizers; and replacing the term "normal" with "non-sensitized" reflects more accurately what would be considered the general control population.

The proposed revision of this section also incorporates a discussion of the factors to be considered in determining whether a substance is a "strong" sensitizer. The current supplemental definition of "strong sensitizer" contains a separate subsection that sets forth factors that should be considered in determining the strength of a sensitizer. (16 CFR 1500.3(c)(5)(ii)). The current section includes several factors that are subjective rather than quantitative (*i.e.*, physical discomfort, distress, hardship) and allows for risk assessment considerations in connection with an analysis that should only be a hazard characterization step.

The current definition of *strong* reads:

> In determining that a substance is a "strong" sensitizer, the Commission shall consider the available data for a number of factors. These factors include any and or all of the following (if available): Quantitative or qualitative risk assessment, frequency of occurrence and range of severity of reactions in healthy or susceptible populations, the result of experimental assays in animals or humans (considering dose-response factors), with human data taking precedence over animal data, other data on potency or bioavailability of sensitizers, data on reactions to a cross-reacting substance or to a chemical that metabolizes or degrades to form the same or a cross-reacting substance, the threshold of human sensitivity, epidemiological studies, and other appropriate *in vivo* or *in vitro* test studies.

The proposed amendment eliminates the "quantitative or qualitative risk assessment factor" because the Commission believes this terminology is a source of confusion in that it places a risk assessment step within the hazard identification step of the overall process of determining whether a product containing a strong sensitizer requires labeling. The proposed amendment makes clear that a weight-of-the-evidence approach is to be used in determining the strength of a sensitizer because of the imprecise nature of some of the current factors and the potential lack of information or data available to permit useful consideration of certain factors. Rather than allowing an "any or all" approach to what factors would be considered by the Commission in determining whether a sensitizer is strong, the amendment ranks data sources in order of importance, following the FHSA preference for human data over animal data; and the amendment takes into consideration the value and relevance that certain data would provide in evaluating the potential of a substance to cause hypersensitivity. For example, the proposed amendment expresses a preference for general population epidemiological studies over occupational studies because the degree of sensitization in the workplace is likely to be greater than that of the general population, due to greater

[1] An "irritant response" is a nonimmune mediated response and one that results from direct injury to the tissue. An irritant is any agent that is capable of producing cell damage in any individual it applied for sufficient time and concentration.

exposure (both in time and concentration) to the sensitizing agent.

The proposed amendment provides that for a substance to be considered a "strong" sensitizer the substance must be found to produce a "clinically important reaction," which is defined as a reaction with a significant impact on the quality of life. Examples of such reactions included in the proposed revision to this section are substantial physical discomfort or distress, substantial hardship, functional or structural impairment, or chronic morbidity. The proposed revision to this section also directs the Commission to consider the location of the hypersensitivity response, such as the face, hands, and feet, and the persistence of clinical manifestations in determining whether the substance produces a "clinically important reaction."

The proposed revision to this section adds several factors the Commission can consider in determining a substance's sensitizing potential, for which validated methods currently do not exist but are in development, such as: Quantitative Structure-Activity Relationships (QSARs), and *in silico*[2] data, along with the caveat that using these techniques would be in addition to consideration of human and animal data. We expect that *in vitro* and *in silico* validated methods will be available as part of an integrated testing strategy within the next 5 years, and including these components in the amendment ensures that the definition is compatible with current science. The proposed revision also includes a definition of "bioavailability" (*i.e.*, the dose of the substance available to interact with a tissue and that tissue's ability to absorb the substance and the actual penetrating ability of the substance).

3. *Definition of Normal Living Tissue.* Currently, 16 CFR 1500.3(c)(5)(v) defines *normal living tissue* as:

> the skin and other organ systems, such as the respiratory or gastrointestinal tract, either singularly or in combination, following sensitization by contact ingestion or inhalation.

The proposed revision adds a specific reference to mucous membranes, such as ocular and oral systems, as types of normal living tissue upon which a substance can cause a hypersensitivity that warrants a determination that a substance is a "strong sensitizer."

4. *Definition of Severity of Reaction.* The current definition for *severity of reaction* at 16 CFR 1500.3(c)(5)(iii)) states that the minimal severity of a reaction for the purpose of designating a material as a "strong sensitizer" is a clinically important reaction, and provides examples of the types of illnesses that could satisfy this criteria, such as physical discomfort, distress, hardship, or functional or structural impairment.

The proposed amendment eliminates this subsection and incorporates the factors to be considered in determining whether a substance is a "strong" sensitizer into the proposed revised section *Significant potential for causing hypersensitivity.*

D. Staff Guidance and Notice of Availability

Commission staff has developed a guidance document that is intended to clarify the "strong sensitizer" definition and assist manufacturers in understanding how CPSC staff would assess whether a substance and/or product containing that substance should be considered a "strong sensitizer." A Notice of Availability is published elsewhere in this issue of the **Federal Register**, which provides a link to the location on the Commission's Web site where the staff guidance document can be found.

E. Impact on Small Businesses

Under the Regulatory Flexibility Act (RFA), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. *Id.* 605(b).

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of revising the supplemental definition of "strong sensitizer." That assessment found that there would be little or no effect on small businesses and other entities because the proposed amendment, which simply modifies the existing supplemental definition of "strong sensitizer," will not result in product modifications to comply; nor will the revised supplemental definition impose any additional testing or recordkeeping burdens. The obligation to label a product as a "strong sensitizer" and any costs associated with that obligation will not arise until the Commission has designated a substance contained in the product as a "strong sensitizer," which would occur only in connection with a separate notice and comment rulemaking proceeding. Thereafter, we would assess the potential small business impact of designating the particular substance as a strong sensitizer. Moreover, the proposed amendment is not expected to impose any indirect burden on small businesses or other entities because it is not expected to lead to any additional substances being designated as strong sensitizers that would not be so designated in the absence of the amendment. Based upon the foregoing assessment, the Commission finds preliminarily that the proposed rule would not have a significant impact on a substantial number of small entities.

F. Environmental Considerations

Generally, CPSC rules are considered to "have little or no potential for affecting the human environment," and environmental assessments and environmental impact statements are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). The Commission does not expect the proposed rule to have any adverse impact on the environment under this categorical exclusion.

G. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 18 of the FHSA addresses the preemptive effect of certain rules issued under the FHSA. 15 U.S.C. 1261n. Because this rulemaking would revise a regulatory definition rather than issue a labeling or banning requirement, section 18 of the FHSA does not provide for the proposed rule to have preemptive effect.

H. Paperwork Reduction Act

This rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

I. Effective Date

The Administrative Procedure Act generally requires that a substantive rule be published not less than 30 days before its effective date, unless the agency finds, for good cause shown, that a lesser time period is required. 5 U.S.C. 553(d)(3). We propose that the rule would take effect 30 days after

[2] QSARs are mathematical models that relate a quantitative measure of chemical structure to biological activity. *In silico* data is a computational approach using sophisticated computer models for the determination of a sensitizing potential. Both of these approaches are evolving methodologies that have not yet been validated, but are being pursued as testing options that would reduce the numbers of expensive laboratory and animal experiments being carried out.

publication of a final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping requirements, and Toys.

Accordingly, 16 CFR part 1500 is proposed to be amended as follows:

PART 1500—[AMENDED]

■ 1. The authority citation for part 1500 continues to reads as follows:

Authority: 15 U.S.C. 1261–1278.

■ 2. In § 1500.3, revise paragraph (c)(5) to read as follows:

§ 1500.3 Definitions.

* * * * *

(c) * * *

(5) The definition of *strong sensitizer* in section 2(k) of the Federal Hazardous Substances Act (restated in 16 CFR 1500.3(b)(9)) is supplemented by the following definitions:

(i) *Sensitizer.* A sensitizer is a substance that is capable of inducing a state of immunologically mediated hypersensitivity (including allergic photosensitivity) following a variable period of exposure to that substance. Hypersensitivity to a substance will become evident by an allergic reaction elicited upon reexposure to the same substance.

(ii) *Significant potential for causing hypersensitivity.* Before designating any substance a "strong sensitizer," the Commission shall find that the substance has significant potential for causing hypersensitivity. *Significant potential for causing hypersensitivity* is a relative determination that must be made separately for each substance. It may be based on chemical or functional properties of the substance; documented medical evidence of allergic reactions upon subsequent exposure to the same substance obtained from epidemiological surveys or individual case reports; controlled *in vitro* or *in vivo* experimental studies; and susceptibility profiles (e.g., genetics, age, gender, atopic status) in non-sensitized or allergic subjects.

(A) In determining whether a substance is a "strong" sensitizer, the Commission shall consider the available data for a number of factors, following a weight-of-evidence approach. The following factors (if available), ranked in descending order of importance, should be considered: well-conducted clinical and diagnostic studies, epidemiological studies, with a preference for general population studies over occupational studies, well-conducted animal studies, well-conducted *in vitro* test studies, cross-reactivity data, and case histories. Criteria for a "well-conducted" study would include validated outcomes, relevant dosing and route of administration, and use of appropriate controls. Studies should be carried out according to national and/or international test guidelines and according to good laboratory practice (GLP), compliance with good clinical practice (GCP), and good epidemiological practice (GEP).

(B) Before the Commission designates any substance a "strong" sensitizer, frequency of occurrence and range of severity of reactions in exposed subpopulations having average or high susceptibility will be considered. The minimal severity of a reaction for the purpose of designating a material a "strong sensitizer" is a clinically important reaction. A clinically important reaction would be considered one with loss of function and significant impact on quality of life. Consideration should be given to the location of the hypersensitivity response, such as the face, hands, and feet and persistence of clinical manifestations. For example, strong sensitizers may produce substantial illness, including any or all of the following: substantial physical discomfort and distress, substantial hardship, functional or structural impairment, chronic morbidity.

(C) Additional consideration may be given to Quantitative Structure-Activity Relationships (QSARs), *in silico* data, specific human sensitization threshold values, and other data on potency and sensitizer bioavailability, if data are available and methods are validated. Bioavailability is the dose of the allergen available to interact with a tissue. It is a reflection of how well the skin or another organ can absorb the allergen and the actual penetrating ability of the allergen, including factors such as size and composition of the chemical.

(iii) *Normal living tissue.* The allergic hypersensitivity reaction occurs in normal living tissues, including the skin, mucous membranes (e.g., ocular, oral), and other organ systems, such as the respiratory tract, gastrointestinal tract, or either singularly or in combination, following sensitization by contact, ingestion, or inhalation.

* * * * *

Dated: March 7, 2013.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–05577 Filed 3–11–13; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0710; FRL–9789–4]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of a State Implementation Plan (SIP) submittal from the State of New Mexico to address Clean Air Act (CAA or Act) requirements in section 110(a)(2)(D)(i)(I) that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA proposes to determine that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS (2006 $PM_{2.5}$ NAAQS) in any other state as required by section 110(a)(2)(D)(i)(I) of the Act.

DATES: Comments must be received on or before April 11, 2013.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0710, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail or Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Deliveries are only accepted ruing the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–

0710. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Young, Air Planning Section (6PD–L), U.S. EPA Region 6, 214–665–6645, *young.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

Table of Contents

I. Background

A. 2006 $PM_{2.5}$ NAAQS and Interstate Transport

Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of New Mexico, EPA is addressing the first two elements of section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS.[1] The first element of section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS prohibit any source or other type of emissions activity in the state from emitting pollutants that will "interfere with maintenance" of the applicable NAAQS in any other state.

On June 12, 2009, the Governor of New Mexico submitted a letter and supporting documentation certifying that the New Mexico Environment Department (NMED) has evaluated the New Mexico SIP, and found that the existing SIP does satisfy all the requirements of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS and that no further revisions are necessary. The supporting documentation included a relevant technical analysis supporting New Mexico's conclusion as recommended by EPA's guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS ("2006 $PM_{2.5}$ NAAQS Infrastructure Guidance" or "Guidance").[2] A copy of New Mexico's submittal and supporting documentation can be found in the electronic docket for this action. In this proposed action, EPA is evaluating whether the June 12, 2009 submittal satisfies the interstate transport provisions of 110(a)(2)(D)(i) prohibiting emissions that adversely affect another state in the ways contemplated in the statute.

B. EPA Rules Addressing Interstate Transport for the 2006 $PM_{2.5}$ NAAQS

EPA has previously addressed the requirements of section 110(a)(2)(D)(i)(I) in past regulatory actions.[3] EPA published the final Cross-State Air Pollution Rule (Transport Rule) to address the first two elements of CAA section 110(a)(2)(D)(i)(I) in the eastern United States with respect to the 2006 $PM_{2.5}$ NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). The Transport Rule was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.[4] *See North Carolina* v. *EPA*, 531 F.3d 896 (DC Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the DC Circuit issued a decision to vacate the Transport Rule. *See EME Homer City Generation, L.P.* v. *E.P.A.*, 696 F.3d 7 (DC Cir. 2012). The court also ordered EPA to continue implementing CAIR in the interim. On January 24, 2013, the DC Circuit issued an order denying all petitions for rehearing. At this time, the deadline for asking the Supreme Court to review the *EME Homer City* decision has not passed and the United States has not yet decided whether to seek further appeal. In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the opinion in *EME Homer City*. New Mexico was not covered by either CAIR or the Transport Rule, and EPA made no determinations in either rule regarding whether emissions from sources in New Mexico significantly contribute to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS

[1] This proposed action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. On January 22, 2013, we approved the SIP submittal for the element regarding interference with measures required to prevent significant deterioration of air quality for the 2006 $PM_{2.5}$ NAAQS (78 FR 4337). We will act on the element regarding protection of visibility in another state in a future separate rulemaking.

[2] *See* Memorandum from William T. Harnett entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf*.

[3] *See* NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

[4] CAIR addressed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour $PM_{2.5}$ NAAQS. For more information on CAIR, please see our July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 $PM_{2.5}$ NAAQS (77 FR 44551, 44552).

in another state. Based on the technical information available at this time, with respect to the 2006 $PM_{2.5}$ NAAQS, the issues relating to transport of New Mexico's emissions are analytically different from the $PM_{2.5}$ pollution transport issues faced in the states addressed by CAIR and the Transport Rule. This position of analytical differences with respect to New Mexico and the 2006 $PM_{2.5}$ NAAQS, based upon information available at this time, relies in part to the more complex terrain in New Mexico and western states also not addressed by CAIR and the Transport Rule, and the greater distance between New Mexico emission sources and areas that have problems attaining and/or maintaining the 2006 $PM_{2.5}$ NAAQS. Additionally, based on the technical information available at this time, the areas of concern in the western U.S. for the 2006 $PM_{2.5}$ NAAQS that EPA analyzed for potential impact by emissions from sources in New Mexico are generally more locally driven than areas of concern addressed in the CAIR and Transport Rule. The methodology and analysis used for evaluating New Mexico's compliance with the interstate transport requirements of 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$ NAAQS is further explained in Section II of this proposed rulemaking.

C. EPA Guidance for SIP Submissions to Address Interstate Transport for the 2006 $PM_{2.5}$ NAAQS

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS ("2006 $PM_{2.5}$ NAAQS Infrastructure Guidance" or "Guidance").[5] With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would contribute significantly to nonattainment of the NAAQS in any other state, the 2006 $p.m._{2.5}$ NAAQS Infrastructure Guidance essentially reiterated the recommendations for western states made by EPA in previous guidance addressing the 110(a)(2)(D)(i) requirements for the 1997 8-hour Ozone and 1997 $PM_{2.5}$ NAAQS.[6] The 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance advised states outside of the CAIR region to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, e.g., information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.[7] With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the State's conclusions, such as information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient concentrations in the state and in potentially impacted states, and air quality modeling. *See* footnotes 5 and 6.

In this action, EPA is maintaining the conceptual approach to evaluating interstate pollution transport under CAA section 110(a)(2)(D)(i)(I) that the Agency provided in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. For the 2006 $PM_{2.5}$ NAAQS, EPA believes that nonattainment and maintenance problems in the western United States are generally relatively local in nature with only limited impacts from interstate transport. EPA believes that the section 110(a)(2)(D)(i)(I) SIP submission from New Mexico may be evaluated using a "weight of the evidence" approach that takes into account available relevant information, such as that recommended by EPA in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in other states. These submissions can rely on modeling when acceptable modeling technical analyses are available, but EPA does not believe that modeling is necessarily required if other available information is sufficient to evaluate the presence or degree of interstate transport in a specific situation.

II. EPA's Evaluation

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA must determine whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If this factual finding is in the negative, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's SIP. Consistent with EPA's approach in the 1998 NO_X SIP call, the 2005 CAIR, and the 2011 Transport Rule, EPA is evaluating these impacts with respect to specific monitors identified as having nonattainment and/or maintenance problems, which we refer to as "receptors." *See* footnote 3. EPA notes that no single piece of information is by itself dispositive of the issue. Instead, the total weight of all the evidence taken together is used to evaluate contributions to nonattainment or interference with maintenance of the 2006 $PM_{2.5}$ NAAQS in another state.

This proposed approval addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS in several ways. It takes into account the technical analysis contained in New Mexico's June 12, 2009 SIP submission, which explains the lack of $PM_{2.5}$ nonattainment areas in or within close proximity to the state reduce the likelihood that New Mexico's emissions contribute significantly to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any downwind state. In addition, EPA has supplemented its evaluation of New Mexico's submittal with a review of the monitors in other states that are appropriate "nonattainment receptors" or "maintenance receptors," and additional technical information in considering whether sources in New Mexico contribute significantly to

[5] *See* Memorandum from William T. Harnett entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)," September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf*.

[6] *See* Memorandum from William T. Harnett entitled "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards," August 15, 2006, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/section110a2di_sip_guidance.pdf*.

[7] The 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour $PM_{2.5}$ NAAQS because the CAIR rule did not address this NAAQS. *See* 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance at 3.

nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in other states.

Our Technical Support Document (TSD) contains a more detailed evaluation and is available in the public docket for this rulemaking, which may be accessed online at *http://www.regulations.gov*, Docket No. EPA–R06–OAR–2009–0710. We provide below a summary of our analysis.

A. Identification of Nonattainment and Maintenance Receptors

EPA evaluated data from existing monitors over three overlapping 3-year periods (*i.e.*, 2006–2008, 2007–2009, and 2008–2010) to determine which areas were violating the 2006 $PM_{2.5}$ NAAQS and which areas might have difficulty maintaining attainment. If a monitoring site measured a violation of the 2006 $PM_{2.5}$ NAAQS during the most recent 3-year period (2008–2010), then this monitor location was evaluated for purposes of the significant contribution to nonattainment element of section 110(a)(2)(D)(i)(I). If, on the other hand, a monitoring site shows attainment of the 2006 $PM_{2.5}$ NAAQS during the most recent 3-year period (2008–2010) but a violation in at least one of the previous two 3-year periods (2006–2008 or 2007–2009), then this monitor location was evaluated for purposes of the interfere with maintenance element of the statute.

The western United States were not included in the CAIR and the Transport Rule analyses. The approach described above is similar to the approach utilized by EPA in promulgating the CAIR and the Transport Rule by identifying the areas/receptors of concern for use in evaluating interstate transport. By this method, EPA has identified those areas with monitors to be considered "nonattainment receptors" or "maintenance receptors" for evaluating whether the emissions from sources in another state could significantly contribute to nonattainment in, or interfere with maintenance in, that particular area.

B. Evaluation of Significant Contribution to Nonattainment

EPA reviewed the portion of the State of New Mexico's June 12, 2009 submission addressing 110(a)(2)(D)(i)(I) and corresponding technical analysis for the 2006 $PM_{2.5}$ NAAQS, with EPA's supplemental analysis and additional technical information to evaluate the potential for New Mexico emissions to contribute significantly to nonattainment of the 2006 $PM_{2.5}$ NAAQS at specified monitoring sites in the western United States.[8] EPA first identified as "nonattainment receptors" all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the 2006 $PM_{2.5}$ NAAQS (35 $\mu g/m^3$) during the years 2008–2010.[9] See Section III of the TSD for a more detailed description of EPA's methodology for selection of nonattainment receptors. Because geographic distance is a relevant factor in the assessment of potential pollution transport, (*See* footnotes 5 and 6). EPA initially focused its review on information related to potential transport of $PM_{2.5}$ pollution from New Mexico to potential nonattainment receptors in the states bordering New Mexico: Arizona, Utah, Colorado, Oklahoma, and Texas.[10] Of these bordering states, EPA identified only Utah as having a nonattainment receptor. As detailed in the TSD, EPA believes that the following factors support a finding that emissions from New Mexico do not significantly contribute to nonattainment of the 2006 $PM_{2.5}$ NAAQS in Utah: (1) Technical information indicating that elevated $PM_{2.5}$ levels at nonattainment receptors are predominantly caused by local emission sources, (2) air quality data indicating that regional background levels of $PM_{2.5}$ are generally low during the time periods of elevated $PM_{2.5}$ at these receptors, (3) the distance to the receptor in the northwest quadrant of Utah, and (4) the presence of significant terrain, which creates a physical impediment to pollution transport.

EPA also evaluated potential $PM_{2.5}$ transport to potential nonattainment receptors in the more distant western states of California, Nevada, Oregon, Washington, Idaho, Wyoming, and Montana.[11] EPA believes that the following factors support a finding that emissions from New Mexico do not significantly contribute to nonattainment of the 2006 $PM_{2.5}$ NAAQS in any of these states (excluding California): (1) The significant distance from the State of New Mexico to the nonattainment receptors in these states, (2) technical information indicating that elevated $PM_{2.5}$ levels at nonattainment receptors in these states are predominantly caused by local emission sources, (3) air quality data indicating that regional background levels of $PM_{2.5}$ are generally low during the time periods of elevated $PM_{2.5}$ at these receptors, and (4) the presence of significant terrain, which creates a physical impediment to pollution transport. With respect to California, technical information indicating that elevated $PM_{2.5}$ levels at the nonattainment receptors are predominantly caused by local emission sources and that the dominant air flows across California are from the west to the east support a finding that emissions from the state of New Mexico do not significantly contribute to nonattainment of the 2006 $PM_{2.5}$ standards in California.

Based on evaluation of New Mexico's technical analysis for the 2006 $PM_{2.5}$ NAAQS, with EPA's supplemental analysis and additional technical information, EPA proposes to conclude that emissions from sources in the State of New Mexico do not significantly contribute to nonattainment of the 2006 $PM_{2.5}$ NAAQS in any other state and that CAA section 110(a)(2)(D)(i)(I) therefore does not require New Mexico to adopt additional controls and submit them to EPA for approval as part of the New Mexico SIP for purposes of implementing the 2006 $PM_{2.5}$ NAAQS.

C. Evaluation of Interference With Maintenance

EPA reviewed the portion of the State of New Mexico's June 12, 2009 submission addressing 110(a)(2)(D)(i)(I) and corresponding technical analysis for the 2006 $PM_{2.5}$ NAAQS, with EPA's supplemental analysis and additional technical information to evaluate the potential for New Mexico emissions to interfere with maintenance of the 2006 $PM_{2.5}$ standards at specified monitoring sites in the western United States. EPA first identified as "maintenance receptors" all monitoring sites in the western states that had recorded $PM_{2.5}$ design values above the level of the

[8] EPA has also considered potential $PM_{2.5}$ transport from New Mexico to the nearest nonattainment and maintenance receptors located in the eastern, midwestern and southern states covered by the Transport Rule and believes it is reasonable to conclude that, given the significant distance from New Mexico to the nearest such receptor (in Illinois) and the relatively insignificant amount of emissions from New Mexico that could potentially be transported such a distance, emissions from New Mexico sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at this location. These same factors also support a finding that emissions from New Mexico sources neither contribute significantly to nonattainment nor interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS at any location further east. *See* TSD at Section I.B.3.

[9] Because CAIR did not cover states in the western United States, these data are not significantly impacted by the remanded CAIR at the time and thus could be considered in this analysis. In contrast, recent air quality data in the eastern, midwestern and southern states are significantly impacted by reductions associated with CAIR.

[10] EPA did not identify any nonattainment receptors in Arizona, Oklahoma, Texas, or Colorado.

[11] Of these more distant seven states, EPA did not identify any nonattainment receptors in Wyoming.

2006 $PM_{2.5}$ NAAQS (35 $\mu g/m^3$) during the 2006–2008 and/or 2007–2009 periods but below this standard during the 2008–2010 period. See section IV of the TSD for more information regarding EPA's methodology for selection of maintenance receptors. All of the maintenance receptors in the western states are located in California, Utah, and Arizona. EPA therefore evaluated the potential for transport of New Mexico emissions to the maintenance receptors located in Arizona, California, and Utah. As detailed in the TSD, EPA believes that the following factors support a finding that emissions from sources in the State of New Mexico do not interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in Arizona and Utah: (1) The significant distance from the State of New Mexico and the sources of New Mexico's $PM_{2.5}$ pollution to the maintenance receptors in these states, (2) technical information indicating that elevated $PM_{2.5}$ levels at maintenance receptors in these states are predominantly caused by local emission sources, (3) air quality data indicating that regional background levels of $PM_{2.5}$ are generally low during the time periods of elevated $PM_{2.5}$ at these receptors, and (4) the presence of significant terrain, which creates a physical impediment to pollution transport. With respect to California, technical information indicating that elevated $PM_{2.5}$ levels at the maintenance receptors are predominantly caused by local emission sources and that the dominant air flows across California are from the west to the east support a finding that emissions from sources in the state of New Mexico do not interfere with maintenance of the 2006 $PM_{2.5}$ standards in California.

Based on this evaluation of New Mexico's corresponding technical analysis for the 2006 $PM_{2.5}$ NAAQS, with EPA's supplemental analysis and additional technical information, EPA proposes to conclude that emissions from sources in the State of New Mexico do not interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state and that CAA section 110(a)(2)(D)(i)(I) therefore does not require New Mexico to adopt additional controls and submit them to EPA for approval as part of the New Mexico SIP for purposes of implementing the 2006 $PM_{2.5}$ NAAQS.

D. Section 110(l) of the Act

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The June 12, 2009 SIP submittal from the State of New Mexico contains no new regulatory provisions and does not affect any requirement in New Mexico's applicable implementation plan. Therefore, the submission does not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. EPA has concluded, based on New Mexico's technical analysis for the 2006 $PM_{2.5}$ NAAQS, and EPA's additional analysis and technical information, that the existing SIP for the State of New Mexico is sufficient to meet the requirements of 110(a)(2)(D)(i)(I).

III. Proposed Action

We are proposing to approve a portion of a SIP submittal for the State of New Mexico submitted by the Governor on June 12, 2009, to address interstate transport for the 2006 $PM_{2.5}$ NAAQS. Based on EPA's evaluation of the State's technical analysis addressing the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS, with EPA's additional analysis and technical information, we propose to approve the portion of the SIP submittal determining the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

IV. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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.

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

Dated: February 25, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–05663 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No.: 111207730–1729–01]

RIN 0648–BB71

Marine Mammals: Alaska Harbor Seal Habitats

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is considering whether to propose regulations to protect glacially-associated harbor seal habitats in Alaska used for pupping, nursing, resting, and molting and limit vessel disturbance to harbor seals in those habitats. The scope of this advance notice of proposed rulemaking (ANPR) encompasses the activities of any person or vessel that may diminish the value of glacial habitats for harbor seals, result in the unauthorized taking of harbor seals, or cause detrimental individual- or population-level impacts. NMFS requests information and comments on whether regulations are needed, and if so, what type of measures would be appropriate to protect harbor seals from the effects of vessel activity in glacial habitats. Any comments or information received in response to this ANPR will be considered prior to any proposed rulemaking.

DATES: Written comments must be received on or before May 13, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number [NOAA-NMFS-2011-0284] by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov/#!docketDetail;D=[NOAA-NMFS-2011-0284]*, click the "Comment Now!" icon, complete the required field, and enter or attach your comments.
- *Mail:* Address written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Jon Kurland for Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: 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 by NMFS. 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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Alicia Bishop, Marine Mammal Specialist, Protected Resources Division, NMFS Alaska Region, at (907) 586–7224 or *alicia.bishop@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*).

Background

Current MMPA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, contains a general prohibition on take of marine mammals. Section 3(13) of the MMPA defines the term "take" as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Except with respect to military readiness activities and certain scientific research activities, the MMPA defines the term 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]."

NMFS regulations implementing the MMPA further describe the term "take" to include: "the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal" (50 CFR 216.3). The MMPA provides limited exceptions to the prohibition on take for activities such as scientific research, public display, and incidental take in commercial fisheries or incidental take by persons engaged in other specified activities. Such activities require a permit or authorization, which may be issued only after a thorough agency review. NMFS has developed regulations for vessel approaches to marine mammals, pursuant sections 112(a) of the MMPA and 11(f) of the ESA. If NMFS develops proposed regulations to protect harbor seals from the effects of vessel activity in glacial habitats, the agency would rely on its authority under section 112(a) of the MMPA to promulgate the regulations.

To date, NMFS has regulated close vessel approaches to marine mammals in Hawaii, Alaska, and the North Atlantic. In 1995, NMFS published a final rule to establish a 100-yard (91-m) approach limit for humpback whales (*Megaptera novaeangliae*) in Hawaii (60 FR 3775, January 19, 1995). In 1997, an interim final rule was published to prohibit approaching critically endangered North Atlantic right whales (*Eubalaena glacialis*) closer than 500 yards (457 m) (62 FR 6729, February 13, 1997). In 2001, NMFS published a final rule (66 FR 29502, May 31, 2001) establishing a 100-yard (91-m) approach limit for humpback whales in Alaska that included a "slow, safe speed" provision for vessels operating near a humpback whale. In 2011, NMFS published a final rule (76 FR 20870, April 14, 2011) prohibiting vessels from approaching killer whales (*Orcinus orca*) within 200 yards (183 m) and from parking in the path of whales when in inland waters of Washington State. The purpose of the regulation is to protect killer whales from interference and noise associated with vessels.

Vessel speed is also restricted to protect North Atlantic right whales in key port entrances along the U.S. Atlantic seaboard during periods that correspond to right whale occurrence. These regulations implement speed restrictions of 10 knots or less for certain vessels (65 ft or greater) to reduce the likelihood and severity of ship collisions with right whales. Other measures to protect right whales include reconfiguration of certain traffic separation schemes, voluntary dynamic management areas, and Mandatory Ship Reporting systems.

In addition to specific regulations that apply to the viewing of marine wildlife,

NMFS provides general guidance to minimize the chances of a "take" occurring during wildlife viewing activities. This guidance is consistent with that of many federal and state agencies who advocate responsible wildlife viewing to observe animal behavior in the wild without causing disturbance. Each of the six NMFS Regions has developed recommended viewing guidelines to educate the general public on how to view marine mammals responsibly in the wild and avoid causing take. Guidelines for marine mammal viewing in Alaska are available on the Internet at: *http://www.fakr.noaa.gov/protectedresources/mmv/guide.htm*. The NMFS "Code of Conduct" under the marine mammal viewing guidelines for viewing harbor seals (*Phoca vitulina richardii*) in Alaska recommends that users remain at least 100 yards (91m) away, and advises viewers to use extra caution when viewing seals hauled out on land or ice as harassment may occur at distances greater than 100 yards. Further, the guidelines state that when viewing marine mammals, actions should not cause a change in the behavior of the animals. Viewers should avoid making the animals aware of their presence by keeping noise low, staying hidden, and staying downwind. Pups are often left alone while the mother feeds and should not be disturbed.

Need for Increased Harbor Seal Management in Glacial Fjords in Alaska

In Alaska, harbor seals range from southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, in the Bering Sea north to Cape Newenham, and the Pribilof Islands. However, tidewater glacial habitats are only available to seals in south-central and southeast Alaska. Tidewater glacier areas serve as important habitats for harbor seals supporting some of the largest aggregations of this species in the world. Consolidated areas of floating glacial ice serve as important substrate for harbor seals to rest, give birth, nurse, and molt. In total, fewer than two dozen ice-filled inlets in Alaska provide this unique form of seal habitat. An estimated 10–15% of the harbor seals in Alaska depend seasonally on these glacial habitats (Bengtson *et al.* 2007); in some glacial areas, such as Icy Bay near Yakutat, minimum seal counts have been as high as 5,000 seals (Jansen *et al.* 2006, Jansen *et al.* 2010b). Some authors have suggested that these aggregations serve as source populations given the higher harbor seal productivity compared to terrestrial sites (Hoover 1983, Womble *et al.* 2010).

Over the last few decades, harbor seal abundance has significantly declined in two glacial fjords: Glacier Bay in southeast Alaska and Aialik Bay in south-central Alaska (Hoover-Miller 1994; Mathews and Pendleton 2006; Womble *et al.* 2010; Hoover-Miller *et al.* 2011). Declining populations in these areas are a concern because glacial fjords are believed to provide seals refuge from predators and provide habitat for large aggregations of seals. A decline in the quality of this habitat (i.e., carrying capacity) via vessel disturbance could have broader impacts on harbor seal populations statewide. In addition, glacial sites in Alaska are now experiencing high rates of ice loss due to climate change, which is likely to further alter habitat quality and may lead to compromised population health (Arendt *et al.* 2002; Larsen *et al.* 2007; Womble *et al.* 2010).

Vessel-based tourism in Alaska has been increasing rapidly over the last few decades. In particular, there has been a dramatic increase in the number of larger cruise ships (i.e., carrying ≥250 passengers) visiting tidewater glacial fjords. The number of cruise ship passengers visiting Alaska per year now exceeds 1 million (Alaska Department of Commerce 2012). Currently about 500 ship visits per year occur in fjords that do not have specific rules regarding approaches to seals, and a recent study indicates that there are high levels of seal disturbance despite existing voluntary guidelines for approach distances to seals (Jansen *et al.* 2010b). In 2012, at Glacier Bay—where cruise ship approaches to seals are regulated by the U.S. National Park Service (NPS)—209 cruise ships visited. At other glacial seal haul outs where ships are unregulated, the frequency of scheduled cruise ship visits in 2012 was: Tracy Arm fjord, 257 visits; Disenchantment Bay, 125 visits; and College Fjord, 39 visits (Cruise Line Agencies of Alaska 2011). Concern about impacts of vessel traffic is elevated for Tracy Arm and Disenchantment Bay where daily visitation is high with as many as 5 cruise ships visiting on a given day. At Endicott Arm, cruise ship traffic was once extremely rare, but now the Arm experiences approximately 30–50 transits by tour ships per year (USFS 2010; Cruise Lines Agencies of Alaska 2011; Cruise Ship Calendar 2012).

Small (i.e., charter boats ≤45 passengers) and mid-size (i.e., tour boats 45–250 passengers) vessel traffic in Alaska has also increased substantially in recent years. At least three small- and mid-size ships added Endicott Arm to their weekly summer itineraries in recent years, and two more mid-size commercial tour vessels regularly visited Endicott Arm in 2011 (USFS 2010). The potential for disturbance to harbor seals is magnified by numerous small boats (zodiacs, kayaks) regularly dispatched by mid-size vessels, which spend prolonged time in the area for glacier and seal viewing opportunities. U.S. Forest Service Visitor Encounters Monitoring Data indicate that visitors in 2010 had nearly twice the motorized encounters at the end of Endicott Arm as visitors had in 2001 (USFS 2010).

In light of these compounding factors, disturbance from vessel traffic becomes a more significant threat to seal survival and reproduction, and thus the long-term stability of seal populations. Recent estimates by NMFS scientists suggest that a single ship can flush up to 16% of the seals present; these estimates do not factor in multiple ships visiting within a day and often times concurrently (Brady *et al.* 2010; Jansen *et al.* 2010a). Pups flushed from ice floes are at risk from cold temperature stress with small increases in time submerged in water of 3–5 °C (Jansen *et al.* 2010b). Further, disturbance can increase the risk of mother-pup separation during the short (~3 weeks) but critical life stage of weaning when pups must receive maternal sustenance and protection to survive.

A number of recent studies have evaluated the effects of vessels on harbor seals in various parts of Alaska:

- In 2001, the Yakutat Tlingit Tribe expressed concern about a gradual seal population decline in Disenchantment Bay occurring in conjunction with, and believed to be caused by, dramatic increases in visitation by cruise ships over the previous 20 years. In 2002, a study by NMFS in collaboration with the Yakutat Tlingit Tribe and Northwest Cruise Ship Association examined the effects of cruise ships on the behavior, abundance, and distribution of harbor seals in Disenchantment Bay. Results from the study indicated that the likelihood of harbor seals vacating the ice and entering the water increased significantly when ships approached closer than 547 yds (500 m) (Jansen *et al.* 2006; Jansen *et al.* 2010b). Seals approached by a ship at 110 yds (100 m) were 25 times more likely to enter the water than seals approached at 547 yds (500 m). Seals increasingly flushed from the ice when cruise ships approached closer than 437 yds (400 m), with about 90 percent flushing at 100 yds (91 m)—the current guideline for minimum approach distance (Jansen *et al* 2010b). Seals were also four times more likely to enter the water when ships approached them directly rather than

passing abeam. More recent results stemming from the NMFS 2002 study showed that the presence of cruise ships altered the large-scale spatial distribution of seals. Seal aggregation density increased in response to cruise ships (Jansen *et al. In review*). Such evidence of large-scale distribution impacts increases concern that ship presence could be altering population birth/death rates, which are difficult to measure.

• A study evaluating and characterizing the exposure of harbor seals to vessel traffic in Johns Hopkins Inlet, Glacier Bay, found that vessel presence altered seal haulout patterns by increasing the rate of flushing (Young 2009). Vessel presence also caused increased seal vigilance and decreased resting. Both the rate and frequency of seal flushing resulting from motorized vessel presence were greater than from kayaks; cruise ships were found to be the most disruptive vessel type. In general, likelihood of seal disturbance was found to increase with vessel size and proximity. Although the overall proportion of seals impacted by vessel disturbance in Johns Hopkins Inlet was relatively low, the author concluded that repeated disturbance may induce the relocation of seals to other areas, and direct energetic impacts may decrease the individual fitness levels of pups. These findings indicate that vessel disturbance could be playing both a direct and indirect role in the decrease of harbor seal abundance in Johns Hopkins Inlet (Young 2009).

• A study in Endicott Arm investigated whether there was a specific change in harbor seal behavior as a result of vessel presence (Smith *et al.* 2010). Initial findings indicated that seals entered the water more often in the presence of a vessel. Those seals that remained hauled out in the presence of a vessel exhibited a change in behavior by lifting and moving their heads (indicating an alert state in response to vessel presence). Researchers concluded that the presence of vessels (all sizes) in Endicott Arm changes the behavior of harbor seals, which likely results in associated energetic costs to the animals. With frequent occurrence, vessel disturbance could negatively influence harbor seal survival, especially during already costly energetic periods associated with breeding, pupping, nursing, and molting (Smith *et al.* 2010).

• Disturbance to wildlife is typically measured by examining behavioral responses to anthropogenic stressors. In addition, physiological responses of seals to vessels are currently being examined in Tracy and Endicott Arms (Karpovich and Blundell 2009). The objective of the study is to measure harbor seal heart rates in response to vessel disturbance, describe associated behaviors, and estimate the increased energetic cost. Researchers' preliminary conclusions question whether classifying disturbance as a seal entering the water is sufficient, given that an increase in heart rate (and associated metabolic/energetic cost) occurs several minutes before a seal enters the water.

Currently, all cruise ships visiting Alaska enter one or more tidewater glacial fjords (Jansen *et al.* 2010b). Four of the five most heavily visited sites—Tracy Arm, Endicott Arm, College Fjord, and Disenchantment Bay—have no specific measures in place to protect sensitive seal habitat. The only protection currently in place in these areas is the MMPA's general prohibition against "take." Studies suggest that compliance with the take prohibition is low with 85–88% of cruise ships approaching harbor seals at distances known to disturb them (Young 2009; Jansen *et al.* 2010). These glacial sites frequented by cruise ships host significant numbers of harbor seals, as illustrated by the most recent counts by NMFS biologists: Tracy Arm, 972 seals in 2010; Endicott Arm, 244 seals in 2010; College Fjord, 817 seals in 2008; and Disenchantment Bay, 1667 seals in 2009 (NMML, unpublished data).

LeConte Glacier Fjord, though currently not experiencing the same level of ship traffic as those described above, also supports a large seasonal population of harbor seals, as last measured at 1,980 individuals in August 2010 (NMML, unpublished data). Icy Bay in south-central Alaska hosts the largest aggregation of harbor seals in the state, and perhaps the world, at an estimated 6,465 seals (in 2007). Icy Bay reportedly receives only a few visits annually from smaller tour vessels (NMML, unpublished data; Jansen *et al.* 2010b), as larger vessels presently are unable to cross the moraine at the entrance to the bay, limiting vessel disturbance. Aialik Bay, in the Kenai Fjords area, is another significant glacial habitat for harbor seals in Alaska with seal counts averaging 500–600 since 2007. Aialik Bay receives traffic primarily from small- to medium-sized tour vessels (A. Hoover-Miller, pers. comm. 2010). The estimates of population size for sites reported above should be considered minimums since they do not correct for seals that are in the water during aerial surveys and therefore not counted.

The NPS has established time-area closures by regulation to protect harbor seals in Glacier Bay National Park and Preserve (GBNPP), which has many tidewater glaciers (36 CFR, subpart C, 13.65). Recognizing that harbor seals react to human activities by flushing into the water, the NPS designated "harbor seal critical areas" within GBNPP where vessel and foot traffic are prohibited to protect pupping and molting harbor seals (36 CFR, subpart N, 13.1178). This includes a prohibition on the operation of vessels or seaplanes in Johns Hopkins Inlet waters from May 1–June 30 during harbor seal pupping season. From July 1–August 31, "all vessels (including kayaks) must remain further than ¼ nautical mile [402 meters] from any seal hauled out on ice, except when safe navigation requires, and then with due care maintain a ¼ mile distance from any concentration of seals. Vessel speed must be 10 knots or less" (36 CFR 13.65). In addition, cruise ships are not allowed to enter Johns Hopkins Inlet from May 1–August 31 to protect seals during the sensitive periods of pupping and molting.

The Alaska Native Harbor Seal Commission, which has a co-management agreement with NMFS under section 119 of the MMPA to assist the agency with harbor seal research and management, has expressed concern about the effects of vessel traffic on harbor seals and requested that NMFS exercise its discretionary authority to promulgate protective regulations.

In summary, populations of glacial-fjord harbor seals exposed to chronic and potentially disruptive levels of vessel traffic have documented and suspected declines in abundance, as well as documented frequent flushing (with projected energetic consequences). This indicates that further management measures are needed beyond the existing 100-yd (91-m) guideline for vessel approach. This is further supported by preliminary information suggesting that even seals that do not flush into the water experience physiological responses to vessel traffic (with energetic consequences).

Section 2 of the MMPA (16 U.S.C. 1361, "Findings and Declaration of Policy") states "in particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions." Glacial sites in Alaska are indeed essential habitat for harbor seals to give birth, nurse, rest, and molt. Currently, these sites receive no protection other than general guidelines to give seals reprieve from human activities during sensitive periods of their life cycle. Further, because takes

continue to occur in these essential habitats, the MMPA "take" prohibition does not currently appear to provide sufficient protection to the characteristics of these habitats that make them suitable places for critical aspects of the harbor seal life cycle. NMFS is therefore considering regulatory conservation measures to: (1) Preserve the habitat functions at existing glacial haul-out sites for harbor seals; (2) limit disturbance of harbor seals at such sites; and (3) minimize the chance of long-term impacts to the population of harbor seals in Alaska.

Request for Information and Comments

NMFS is requesting information and comments on whether conservation measures, regulations, or other management action would be appropriate to protect harbor seals in Alaska from human activities that diminish the value of important habitat, result in unauthorized take, and/or may cause detrimental individual- and population-level impacts. NMFS is also requesting information and comments on what type of measures may provide appropriate protection for harbor seals while minimizing impacts on ocean users. Based on the best available science and input received in response to the publication of this notice, NMFS may propose management measures for public comment. The following list includes examples of potential management measures that NMFS may consider:

- Specific corridors for vessel movement.
- Vessel movement parameters relative to ice.
- Vessel speed limits.
- Required minimum approach distance and use of observers to keep a designated ship-to-seal separation distance. Similar to the minimum approach rules established for humpback whales in Hawaii and Alaska, and right whales in the North Atlantic, a limit could be established by regulation to accommodate harbor seal viewing opportunities while minimizing the potential detrimental impacts from human activity; and
- Time-area closures. Similar to seasonal measures used by the NPS to protect seals in Johns Hopkins Inlet, NMFS could establish a regulation limiting human access to certain harbor seal ice-associated habitats, or to zones within these areas. These measures could limit all human entry to the area past a particular demarcation line; measures could be specific to only certain acts within an area; measures could be full-time or limited to certain seasonally important times (e.g., excluding entrance during pupping and/or molting). A closure could also consist of any combination of the above.

NMFS invites information and comment from the public on management measures such as those options listed above, or on other possible measures, to help the agency decide what type of regulations, if any, would be appropriate to consider for protecting harbor seal populations in habiting glacial fjords in Alaska. In particular, we are seeking information and comments concerning:

(1) The advisability of and need for regulations;

(2) The geographic scope and time horizon of regulations;

(3) Management options for regulating vessel interactions with harbor seals, including but not limited to the options listed in this notice;

(4) Scientific and commercial information regarding the effects of vessels on harbor seals and their habitat;

(5) Information regarding potential economic effects of regulating vessel interactions;

(6) The feasibility of any management measure or regulation (for example, navigational safety or security concerns); and

(7) Any additional relevant information that NMFS should consider should it undertake rulemaking.

You may submit information and comments by any one of several methods (see **ADDRESSES**). Electronic copies of the materials prepared for this action are available at *http://www.regulations.gov* or *http://alaskafisheries.noaa.gov*.

References Cited

A complete list of all references cited in this advanced notice of proposed rulemaking is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

Dated: March 5, 2013.

Alan D. Risenhoover,

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

[FR Doc. 2013–05646 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BC63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 28

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

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 28 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 28 proposes actions to establish a process for determining whether the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) could occur during a given fishing year. Amendment 28 specifies the process and formula for setting commercial and recreational annual catch limits (ACLs) for red snapper if a limited fishing season may occur and specifies accountability measures (AMs). Amendment 28 also proposes during a limited fishing season to eliminate the current red snapper minimum size limit, establish a recreational bag limit and a commercial trip limit for red snapper, and establish a process for setting commercial and recreational fishing seasons for red snapper beginning in 2013. The intent of Amendment 28 is to continue the rebuilding of the red snapper stock and to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the red snapper resource.

DATES: Written comments must be received on or before May 13, 2013.

ADDRESSES: You may submit comments on Amendment 28 identified by "NOAA–NMFS–2013–0040" by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0040*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: 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 by NMFS. 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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 28, which includes an environmental assessment, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGAmend28.pdf*.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of Magnuson-Stevens Act. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Background

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper has been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009 and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibition on a permanent basis by implementing an ACL for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. The final rule implementing Amendment 17A also included a large area closure for most snapper-grouper species, however, this area closure did not become effective because it was determined not to be necessary to end the overfishing of red snapper (76 FR 23728, April 28, 2011). At its June 2012 meeting, the Council received new information from NMFS regarding discard estimates for red snapper. Using these data, the Council and NMFS determined that a limited season for red snapper was possible in 2012. At the Council's request, NMFS implemented emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012 (77 FR 51939, August 28, 2012).

Status of the Stock

The most recent Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 24, was completed in October 2010. Much like the stock assessment completed in 2008, this assessment showed red snapper to be overfished and undergoing overfishing, but also showed that red snapper were undergoing overfishing at a lower rate than found in the 2008 stock assessment. The next benchmark stock assessment for red snapper is scheduled for 2014.

Actions Contained in Amendment 28

Amendment 28 would implement several management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ. When the Council approved, and NMFS implemented, the temporary rule through emergency action in 2012, they determined that retention of a limited number of red snapper (13,097 fish) would not jeopardize the rebuilding of the red snapper stock if the acceptable biological catch (ABC) was not exceeded in the previous year. In Amendment 28, the Council has made a similar determination depending on certain conditions, beginning in 2013.

Process for Determining the Annual Red Snapper Harvest

Amendment 28 describes the annual process developed by the Council for determining whether a limited fishing season for red snapper will occur and how much red snapper may be harvested. The ABC is determined through the Council's ABC control rule and the rebuilding projections from the most recent stock assessment. Estimated landings and dead discards of red snapper from the previous year should be available around March of each year, and NMFS would use that information in formulas approved by the Council in Amendment 28. If NMFS determines that the estimated landings and dead discards that occurred in the previous year are equal to or greater than the ABC for the current year, no harvest would be allowed and the ACL would remain equal to zero. However, if NMFS determines that the previous year's estimated landings and dead discards are less than the ABC, then the ACL would be set to the amount of harvest that may be allowed for the current year.

Setting the Commercial and Recreational Red Snapper Fishing Seasons

If NMFS determines commercial and recreational fishing seasons are allowed for that fishing year, NMFS would announce the commercial and recreational fishing season start dates in the **Federal Register** and by other methods, as deemed appropriate. The commercial fishing season would begin on the second Monday in July, and the recreational fishing season would begin on the second Friday in July. NMFS would project when the recreational ACL would be reached and announce the fishing season end date in the **Federal Register**. The recreational season length would be based on an evaluation of historical harvest levels and fishing effort. The recreational fishing season would consist of weekends only (Fridays, Saturdays, and Sundays). NMFS would not announce the season end date for the commercial sector before the season starts, but would close the commercial sector when the commercial ACL has been reached or projected to be reached by filing an in-season closure notification with the Office of the Federal Register. After the commercial sector closes, sale and purchase of red snapper is prohibited and harvest and possession of red snapper is limited to the bag and possession limit.

If the NMFS Regional Administrator (RA) determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic during the commercial or recreational fishing season, Amendment 28 would allow the RA to modify the opening and closing dates by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and Fishery Bulletin any change in the red snapper commercial or recreational fishing seasons. If the projected commercial and/or recreational fishing seasons are determined by NMFS to be 3 days or

less, then the commercial and/or recreational fishing seasons would not open for that fishing year.

Formula for Setting the ACLs

Amendment 28 includes a formula for determining the commercial and recreational ACLs on an annual basis. The formula is based on total removals (landings plus discards) from prior fishing years. The formula would provide the total ACL for a limited fishing season. Then using the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational), NMFS would determine the commercial and recreational ACLs. When finalized data from the prior fishing years are available, NMFS would publish a notification with the Office of the Federal Register to announce the commercial and recreational ACLs for a limited fishing season for that fishing year.

AMs

The Council and NMFS would establish in-season AMs during a limited fishing season to prevent these ACLs from being exceeded. If red snapper harvest is allowed in a given fishing year, the commercial in-season AM requires that if commercial landings reach or are projected to reach the commercial ACL, then NMFS would close the commercial sector for red snapper for the remainder of the fishing year. After the commercial sector closes, sale and purchase of red snapper is prohibited and harvest and possession of red snapper is limited to the bag and possession limit. The recreational in-season AM is the length of the recreational fishing season as determined by NMFS and announced in the **Federal Register**.

Other Management Measures

In order to reduce the probability of an overage of the commercial and recreational ACLs during the limited open seasons, Amendment 28 would implement a 75-lb (34-kg) commercial trip limit and a 1-fish per person recreational bag limit. Amendment 28 would also remove the 20-inch (51-cm), total length (TL), minimum size limit for both the commercial and recreational sectors to decrease regulatory discards of red snapper (fish returned to the water because they are below the minimum size limit).

A proposed rule that would implement measures outlined in Amendment 28 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 28 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils submitted Amendment 28 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 28 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on May 13, 2013, will be considered by NMFS in the approval/disapproval decision regarding Amendment 28.

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

Dated: March 7, 2013.

Kara Meckley,

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

[FR Doc. 2013–05644 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130103002–3185–01]

RIN 0648–BC85

Fisheries of the Northeastern United States; Proposed 2013–2015 Spiny Dogfish Fishery Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2013–2015 fishing years. The proposed action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. The proposed management measures are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass. The proposed action is expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: Comments must be received on or before March 27, 2013.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2013–0044, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0044*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* (978) 281–9135, Attn: Tobey Curtis.

Instructions: 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 by NMFS. 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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. 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, Excel, or Adobe PDF file formats only.

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

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 1998, NMFS declared Spiny dogfish (*Squalus acanthias*) overfished. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to prepare measures to end overfishing and rebuild the spiny

dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP), with the MAFMC designated as the administrative lead. The FMP was implemented in 2000, and the spiny dogfish stock was declared to be successfully rebuilt in 2010.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The MAFMC's Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and recommends acceptable biological catch (ABC) levels. This recommendation is then used as the basis for catch limits and other management measures developed by the MAFMC's Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of the NEFMC). The MAFMC and NEFMC then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In September 2012, the NMFS Northeast Fisheries Science Center updated the spiny dogfish stock status, using the most recent catch and biomass estimates from the 2012 spring trawl survey. Updated estimates indicate that the female spawning stock biomass (SSB) for 2012 was 475.634 million lb (215,744 mt), about 35 percent above the target maximum sustainable yield (MSY) biomass proxy (SSB_{MAX}) of 351 million lb (159,288 mt). The 2011 fishing mortality rate (F) estimate for the stock was 0.114, well below the overfishing threshold (F_{MSY}) of 0.2439. Therefore, the spiny dogfish stock is not currently overfished or experiencing overfishing. However, while recruitment has increased in recent years, poor pup production from 1997–2003 is projected to result in declines in SSB between approximately 2014–2020, when the pups from the 1997–2003 years recruit to the spawning stock.

The MAFMC's SSC subsequently recommended new acceptable biological catch (ABC) levels for spiny dogfish for the 2013–2015 fishing years. The ABC recommendations were based on an overfishing level of median catch at the F_{MSY} proxy, and the MAFMC's risk policy for a Level 3 assessment (40-percent probability of overfishing). The resulting spiny dogfish ABCs are 54.474 million lb (24,709 mt) for 2013, 55.455 million lb (25,154 mt) for 2014, and 55.241 million lb (25,057 mt) for 2015.

Council Recommendations

The Spiny Dogfish Monitoring Committee and the Atlantic State Marine Fisheries Commission's (Commission) Spiny Dogfish Technical Committee met in September 2012 to determine the resulting specifications following the FMP's process. To calculate the commercial quota for each year, deductions were made from the ABCs to account for projected Canadian landings (179,000 lb (81 mt)), management uncertainty (3.99 percent of the ACL), U.S. discards (11.698 million lb (5,306 mt)), and U.S. recreational harvest (58,000 lb (26 mt)). The final recommended ACLs and commercial quotas are shown in Table 1. The proposed commercial quotas represent 14–17-percent increases from the status quo commercial quota (35.694 million lb (16,191 mt)).

The Councils also recommended an increase in the spiny dogfish possession limit from 3,000 lb (1,361 kg) to 4,000 lb (1,814 kg) per trip in each year (Table 1). The possession limit increase is projected to help increase trip level revenues, and reduce the potential for under-harvesting the available quota. The Commission has adopted identical management measures in state waters for 2013.

TABLE 1—SUMMARY OF PROPOSED SPINY DOGFISH ACLS, COMMERCIAL QUOTAS, AND POSSESSION LIMITS FOR THE 2013–2015 FISHING YEARS

Year	ACL		Commercial quota		Possession limit	
	M lb	mt	M lb	mt	lb	kg
2013	54.295	24,628	40.842	18,526	4,000	1,814
2014	55.277	25,073	41.784	18,953	4,000	1,814
2015	55.063	24,976	41.578	18,859	4,000	1,814

As currently specified in the FMP, quota period 1 (May 1 through October 31) would be allocated 57.9 percent of the commercial quota, and quota period 2 (November 1 through April 30) would be allocated 42.1 percent of the commercial quota. However, the Councils have approved Amendment 3 to the FMP, which would eliminate the seasonal allocation of the commercial quota. Upon implementation of Amendment 3 (which has not yet been submitted to NMFS, but is expected early in the 2013 fishing year), if approved, the commercial quota would only be monitored on an annual, coastwide basis, thereby reducing potential conflicts with the Commission's management of spiny dogfish.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The comment period for this proposed rule (15 days) is shorter than that normally reserved for specifications in order to ensure that the final rule can become effective for the beginning of the fishing year on May 1, 2013.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The MAFMC prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of

this analysis is available from the MAFMC (see **ADDRESSES**).

This rule will impact fishing vessels, including commercial fishing entities. For the purposes of analyses under the Regulatory Flexibility Act, the Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (part of NAICS code 487210) is $7 million in sales. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels may be owned by a single owner, ownership tracking is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this rule. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

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

The proposed increase in the spiny dogfish commercial quota would impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to MAFMC's analysis, 2,743 vessels were issued spiny dogfish permits in 2011. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from Massachusetts (31.6 percent), New Jersey (14.7 percent), New Hampshire (11.4 percent), Rhode Island (9.8 percent), New York (8.0 percent), North Carolina (6.7 percent), and Virginia (5.8 percent).

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

Four management alternatives were analyzed for each year, 2013–2015. Alternative 1 represents the preferred alternative proposed in this rule (Table 1). Alternative 2 would include the same commercial quotas as Alternative 1, but would maintain the status quo possession limit of 3,000 lb (1,361 kg), rather than increasing it to 4,000 lb (1,814 kg). Alternative 3 would increase the possession limit to 4,000 lb (1,814 kg), and include the highest possible commercial quotas by not making a deduction from the ACL accounting for management uncertainty (estimated to be 3.99 percent of the ACL). Under Alternative 3, the commercial quotas would be 42.539 million lb (19,295 mt) in 2013, 43.520 million lb (19,740 mt) in 2014, and 43.307 million lb (19,644 mt) in 2015. Alternative 4 represents the status quo alternative, which would maintain fishing year 2012 specifications through 2015 (35.694 million-lb (16,191-mt) commercial quota; 3,000-lb (1,361-kg) possession limit).

The proposed action is likely to result in greater revenue from spiny dogfish landings, which could be 14–17 percent higher than the status quo commercial quota. Based on recent landings information, the spiny dogfish fishery is able to land close to the full amount of fish allowable under the quotas. Total spiny dogfish revenue from the 2011 fishing year was approximately $4.456 million, when the commercial quota was 20 million lb (9,072 mt). Fishing year 2012 (status quo) spiny dogfish revenue is estimated to be $7.5 million under a commercial quota of 35.694 million lb (16,191 mt). Assuming the 2011 average price ($0.21 per lb), landing the proposed commercial quotas (Table 1) would result in gross spiny dogfish revenues of approximately $8.577 million in 2013, $8.775 million in 2014, and $8 731 million in 2015. Additionally, with the proposed possession limit increase from 3,000 lb (1,361 kg) to 4,000 lb (1,814 kg), trip-level spiny dogfish revenues would increase from approximately $630 per trip to $840 per trip. The expected increases in spiny dogfish revenue should benefit those ports that are more heavily dependent on spiny dogfish revenue than other communities, including Virginia Beach/Lynnhaven, VA; Rye and Seabrook, NH; and Scituate, MA.

The purpose of the proposed action is to increase spiny dogfish catch limits and landings, consistent with the best available science and the FMP, thereby extending the duration of the fishing season and increasing annual and trip-level spiny dogfish revenues relative to the status quo. The proposed action is expected to maximize the profitability for the spiny dogfish fishery during the 2013–2015 fishing years, without jeopardizing the long-term sustainability of the stock. Therefore, the economic impacts resulting from the proposed action as compared to alternatives with lower quotas or possession limits are positive.

The proposed action is expected to result in the most positive economic impacts among the alternatives, except for Alternative 3, which could result in slightly higher gross spiny dogfish revenues. However, Alternative 3 does not account for management uncertainty, which would result in a higher risk of exceeding the ACL, and would be inconsistent with the requirements of the FMP. Alternative 3 would also be inconsistent with the Commission's management of the spiny dogfish fishery in state waters; the Commission selected Alternative 1 commercial quotas.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 2013.

Alan D. Risenhoover,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.235, revise introductory text to paragraphs (a) and (b), and revise paragraphs (a)(1), and (b)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) *Quota period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1,814 mt) of spiny dogfish per trip; and

* * * * *

(b) *Quota period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1,814 mt) of spiny dogfish per trip; and

* * * * *

[FR Doc. 2013–05637 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–BC25

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 42 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) for review by the Secretary of Commerce (Secretary). Amendment 42 would revise the annual economic data reports (EDRs) currently required of participants in the Crab Rationalization Program (CR Program) fisheries. The EDRs include cost, revenue, ownership, and employment data the North Pacific Fishery Management Council (Council) and NMFS use to study the economic impacts of the CR Program on harvesters, processors, and affected communities. Amendment 42 is necessary to eliminate redundant reporting requirements, standardize reporting across participants, and reduce costs associated with the data collection. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before May 13, 2013.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by NMFS docket number NOAA–NMFS–2012–0111, by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA–NMFS–2012–0111 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "submit a comment" icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

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

Electronic copies of Amendment 42, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis, the categorical exclusion prepared for this action, and the Environmental Impact Statement prepared for the Crab Rationalization Program may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 907–586–7228 or *karen.palmigiano@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). The Secretary of Commerce approved Amendments 18 and 19 to the FMP on November 19, 2004. NMFS published final regulations implementing the Crab Rationalization Program (CR Program) in 2005 (70 FR 10174, March 2, 2005). Regulations implementing the FMP, including the CR Program, are located at 50 CFR part 680.

The CR Program is a limited-access system that allocates crab managed under the FMP among harvesters, processors, and coastal communities. Each year, the quota share (QS) issued to a person yields an amount of individual fishing quota (IFQ), which is a permit providing an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS pool in a crab fishery would receive IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery.

As part of the CR Program, the Council recommended and NMFS implemented a comprehensive economic data collection program. The CR Program requires participants to complete an annual economic data report (EDR) based on harvesting and processing activities for that fishing season. The Council and NMFS use the EDR to assess the success of the CR Program and develop amendments to the FMP necessary to mitigate any unintended consequences of the CR Program. An annual EDR is currently required for four categories of participants in the CR Program fisheries: catcher vessels, catcher/processors, shoreside processors, and stationary floating crab processors.

The information collected in the EDR is intended to provide comprehensive data to assist the Council and analysts in understanding the costs and benefits of the CR Program on harvesters' and processors' crab operations. Specifically, the Council and analysts use the data to examine changes in usage of the crab, excess harvesting and processing capacity, economic returns, variable costs and revenues, economic efficiency, and the stability of harvesters, processors and coastal communities. Data submission is mandatory (see regulations at § 680.6(a)). The EDR Program is administered by NMFS through contracts with the Pacific States Marine Fisheries Commission (PSMFC). NMFS collects fees from CR Program participants to recover the costs of administering the EDR (see regulations at § 680.44 for cost recovery fee collection under the CR Program). Section 304(d)(2) of the Magnuson-Stevens Act requires that NMFS collect fees necessary to recover the actual costs directly related to data collection of limited access privilege programs, such as the CR Program.

Since the beginning of the CR Program, EDRs containing cost, revenue, ownership, and employment data have been collected by NMFS annually from the harvesting and processing sectors. This comprehensive approach to collecting data was implemented because the data collection programs in place at the time the CR Program began did not collect employment, cost, and sales information necessary to adequately examine how processing plants and vessels were being affected by the implementation of the CR Program. Collection of these data could help the Council understand the economic performance of crab fishermen, determine how this performance has changed after rationalization, and assess what aspects of these changes are specifically attributable to crab rationalization.

In 2010, the Council initiated an analysis to modify the EDR based on the results of its data quality review process and public comment received during the Council's 5-year review of the CR Program. As part of this analysis, the Council considered input from a Center for Independent Experts review of the data collection program that was completed in October 2011 (see Section 2.4.3 of the analysis for additional detail). In February 2012, the Council recommended Amendment 42 to the FMP to modify the EDR. This proposed rule would implement the Council's recommended changes to the EDR under Amendment 42. The proposed modifications to the current EDRs are presented in the analysis for this action (see Section 2.2. of the analysis) and summarized below.

Amendment 42 to the FMP is the Council's solution to these issues that would increase the quality of data collected, as well as reduce the burden on the submitters. If approved, this action would also reduce the amount of data collected from each of the three sectors: catcher vessels, shoreside and stationary floating crab processors, and catcher/processors. The Council's objective is to collect data that can be accurately and reliably reported, and to only collect data that is unavailable through other data collection programs.

Annual Catcher Vessel Crab EDR

Much of the data requested on the current annual catcher vessel Crab EDR is available through other sources (e.g., eLandings data collected by NMFS contains information on the specific quota accounts debited during a landing). Further, the quality of some data currently collected is poor and results in limited usefulness of the data for analyses (e.g., estimates of bait used are known to be inaccurate and unreliable). The Council recommended scaling back the data collection in the EDR, including eliminating the data collected in some categories so that only data that could be accurately and reliably collected would be required.

The proposed catcher vessel EDR would continue the collection of revenue data, including landings by share type by crab fishery (pounds and revenue), and market-value or negotiated-price transfers of IFQ and community development quota (CDQ) received for harvest on the vessel during the calendar year, by fishery and harvest quota permit type (pounds and revenue). Data on payments to captains and crew would still be collected by fishery. Crew license and Commercial Fisheries Entry Commission (CFEC) permit numbers would also continue to be collected to facilitate analysis of demographic distribution of crew benefits. The proposed EDR would also require the reporting of vessel costs such as bait, food, and provisions purchased by crab fishery. This is slightly different from the current forms, which require submitters to include the quantity of these items used versus what is purchased. This new data on the quantity of items purchased would provide some understanding of expenditures and would be more easily reported by submitters than the quantity of items used.

Annual Shoreside Processor/Stationary Floating Processor Crab EDR

Amendment 42 proposes an Annual Shoreside Processor/Stationary Floating Processor Crab EDR (processor EDR), which combines the Annual Shoreside Processor Crab EDR and the Annual Stationary Floating Processor Crab EDR into a processor EDR. The proposed processor EDR would eliminate several elements from the current data collections. Most of the deleted elements represent production data, which are similar to data found within the State of Alaska's Commercial Operators Annual Report (COAR). Crab processors must submit the COAR annually and report processing and plant costs in it. The production data that is not available through other sources could be estimated by NMFS based on landings data. Therefore, the proposed exclusion of these data from the processor EDR would not affect the analysis of EDR data and may decrease the submitter's time burden required to fill in the form.

Revenue data collected under the proposed processor EDR would remain essentially the same. However, the proposed processor EDR would not require sales data by crab size or grade. Packing box sizes would continue to be reported by categories. Revenues from custom processing (an arrangement under which a person processes crab on behalf of another) would be added. Reporting of labor data (i.e., man-hours, total processing labor payments, and crab processing employees by residence) would not change from the status quo. Custom processing services purchased would be reported with some differences from the status quo (i.e., excluding crab size and grade and box size). Crab purchases by share type would still be collected.

Annual Catcher/Processor Crab EDR

Catcher/processors participate in both harvesting and processing. Therefore, the proposed catcher/processor EDR includes elements for the collection of harvesting and processing information.

Amendment 42 would eliminate some of the current reporting requirements for catcher/processors, which have been deemed to be inaccurately reported. Several elements would remain, including sales by species by packing box size to affiliated entities and unaffiliated entities, custom processing revenue and production, payments to captains and crews, crew license, CFEC permit numbers and residence information, custom processing services purchased, and crab purchases by share type. All this information provides data

that is not found in other data collections and is useful to analysts when assessing the CR Program.

Public comments are being solicited on proposed Amendment 42 through the end of the comment period (see **DATES**). Public comments on the proposed FMP amendment must be received by the close of the comment period on Amendment 42 to be considered in the approval/disapproval decision on Amendment 42. All comments received by the end of the comment period, whether specifically directed to the FMP amendment or the proposed rule will be considered in the approval/disapproval decision on Amendment 42. Comments received after the end of the public comment period for Amendment 42, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the FMP amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: March 7, 2013.

Kara Meckley,

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

[FR Doc. 2013–05636 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 48
Tuesday, March 12, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to VHN Enterprises, LLC of San Francisco, California, an exclusive license to U.S. Patent No. 7,858,125, "MULTI-COMPONENT BIOCIDE COMPOSITION FOR WOOD PROTECTION", issued on December 28, 2010.

DATES: Comments must be received on or before April 11, 2013.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as VHN Enterprises, LLC of San Francisco, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Robert Griesbach,

Deputy Assistant Administrator.

[FR Doc. 2013–05603 Filed 3–11–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0014]

Information Sharing With Agency Stakeholders: Public Meeting

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Request for information and notice of public meeting.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service (APHIS) is soliciting feedback from our stakeholders regarding cross-Agency strategic priorities. We are also announcing that APHIS is hosting a public meeting to share information about the Agency's budget and program restructuring, as well as to provide an opportunity for stakeholders to ask questions and share their perspective.

DATES: The meeting will be held on April 11, 2013, from 10 a.m. to noon. We will accept stakeholder feedback on the specific topics raised in this notice until May 13, 2013.

ADDRESSES: The meeting will be held in room 107A at the USDA Whitten Building, 1400 Independence Avenue SW., Washington, DC. You may submit feedback on the topics covered in this notice to the person listed under **FOR FURTHER INFORMATION CONTACT** or by submitting a comment using the Regulations.gov Web site (*http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0014-0001*).

FOR FURTHER INFORMATION CONTACT: Ms. Hallie Zimmers, Adviser for State and Stakeholder Relations, APHIS, Room 1153, 1400 Independence Avenue SW., Washington, DC 20250; phone (202) 799–7029.

SUPPLEMENTARY INFORMATION: As part of its ongoing efforts to enhance stakeholder communication and information sharing, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) is hosting an open meeting with all interested stakeholders to discuss the Agency's budget, pending program restructuring and potential impacts, and several cross-Agency strategic priorities.

Like all Federal agencies, APHIS is facing a number of new and evolving challenges, including decreasing budgets, fewer available resources, and the continued need to successfully balance science, policy, and public opinion. As we plan for how to position APHIS to meet these and other challenges, our commitment to our animal and plant health mission remains firm. In keeping with this commitment, we want to continue to improve our business strategies and program delivery methods to enhance our overall effectiveness. As we begin to consider new opportunities and rethink current business practices, we want to engage our stakeholders in a dialog early in the process to ensure we're in alignment with our customers' needs. In particular, we are interested in your perspective regarding:

- Public and private partnerships, such as disease management and eradication programs that benefit from State and industry contributions.
- Non-regulatory solutions, such as compliance and education programs that can be used, when appropriate, to achieve results without the need for rulemaking.
- New technology that encourages commerce or enhances APHIS' ability to protect American agriculture.
- Customer service improvements that make it easier for stakeholders to do business with APHIS.

These are just a few examples; we believe many additional opportunities exist under the broad priorities of public and private partnerships, non-regulatory solutions, new technology and customer service. APHIS will speak to how the Agency is considering and already using these cross-Agency strategic priorities in greater depth at the public meeting. Ultimately, we believe stakeholders are in a unique position to provide insight and offer up new approaches that will enable APHIS to more effectively carry out our animal and plant mission and better serve our many customers.

You may submit your thoughts and feedback by responding to this notice (see **ADDRESSES** above) or by emailing

partnerships@aphis.usda.gov. You can also bring a paper copy of your comments to the public meeting where you will also have the opportunity to share your perspective directly with the APHIS Management Team.

Persons attending the April 11, 2013, meeting in Washington, DC, are required to register in advance at *https://web01.aphis.usda.gov/MeetingReg.nsf/AltgRegistration?openform* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All registrants will be required to sign in at either the Independence Avenue or Jefferson Drive entrances to USDA's Whitten Building, which is located at 1400 Independence Avenue SW. Photo identification is required to gain access to the building. The nearest Metro station is the Smithsonian station on the Blue/Orange Lines, which is within easy walking distance.

If you are unable to attend the meeting in person, it will be streamed on the Internet as a live Webcast. An audio conference line will also be made available for remote participants to ask questions. Information about how to join the live Webcast and conference line will be made available at *http://www.aphis.usda.gov/stakeholders/*. We recommend that you connect at least 5 minutes prior to the start of the meeting. A recording of the Webcast will be posted to the APHIS stakeholder information page for anyone who is unable to join the meeting on April 11, 2013.

Done in Washington, DC, this 5th day of March 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–05566 Filed 3–11–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest, Dillon Ranger District; Montana; Birch, Willow, Lost Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Birch, Willow, Lost Project proposes to treat vegetation communities in the four sub-watersheds that cover the project area. The scope of the project is limited to those portions of the four sub-watersheds covered by the project area boundary. This project is not a general management plan for the watersheds, nor is it a programmatic environmental analysis for vegetation communities.

DATES: Comments concerning the scope of the analysis will be most helpful if received by April 11, 2013. The draft environmental impact statement is expected October of 2013 and the final environmental impact statement is expected March of 2014.

ADDRESSES: Send written comments to: Attention Alex Dunn, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725, and weekdays 7:30 a.m. to 4:30 p.m. for hand delivery. Comments may also be sent via email to: *comments-northern-beaverhead-deerlodge@fs.fed.us* in one of the following formats: Word (.doc or .docx), rich text format (.rtf), text (.txt), and/or hypertext markup language (.html). Please make sure to put BWL Project in the subject line. Comments may also be sent via facsimile to: Attention Alex Dunn, BWL Project 406–683–3886. For all forms of comment, make sure to include your name, physical address, phone number, and a subject title of BWL Project.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Dunn, Forest Environmental Coordinator at (406) 683–3864 or via email at *adunn@fs.fed.us*. 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.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This action is being undertaken to contribute to the achievement of the following Beaverhead-Deerlodge Land and Resource Management Plan (Forest Plan) Objectives for vegetation within the project area: *Aspen Component*—Increase the aspen component within Lodgepole pine and other vegetation types, on 67,000 acres (Forest Plan pg. 44). *Grassland/Shrubland/Riparian*—Reduce conifer encroachment on 74,000 acres of riparian areas, shrublands, and grasslands (Forest Plan pg. 44). *Resiliency*—Reduce forest density in the large size classes of dry forest communities to maintain or improve resilient forest conditions (Forest Plan pg. 43). *Whitebark Pine/Sub-Alpine Fir Type*—Promote regeneration of Whitebark Pine on approximately 45,000 acres, largely through the use of fire (Forest Plan pg. 43). This project is needed because there is a difference between the existing condition and the desired condition for the above vegetation types in the project area.

Proposed Action

The responsible official proposes to:

—Treat a total of 13,282 acres of the 59,133 acres within the project area, in five dominant vegetation types in 133 Units in the project area. A total of 1,237 acres of *Aspen* would be treated through mechanical, commercial, burning, lop and scattering, and/or mastication. A total of 3,440 acres of *Douglas-Fir* would be treated through commercial thin, mastication, and/or burning. A total of 1,883 acres of *Mountain Mahogany* would be treated through lop and scatter and/or mastication. A total of 6,292 acres of *Shrub-Grasslands* would be treated through lop and scatter, burning/slashing, and/or mastication. A total of 430 acres of *Mid and High Elevation Mixed Conifer* would be modified through slashing with chainsaws, and/or burning. Planting limber pine may occur on about 100 acres due to the majority of seed-bearing limber pine trees being dead from mountain pine beetle. The extent of planting would be assessed after the prescribed burning is completed.

—Recondition and/or spot reconstruction of a total of 13.3 miles on five roads within the project area. Forest Road (FR) 7487 (Farlin Gulch) would have 1.7 miles Reconditioned/Spot Reconstructed. FR 98 (Birch Creek) would have 3.7 miles Reconditioned/Spot Reconstructed. FR 1211 (Gorge Creek) would have 1.1 miles Reconditioned/Spot Reconstructed. FR 7476 (Lower Willow Creek) would have 1.7 miles Spot Reconstructed. FR 8200 (Willow Creek) would have 5.1 miles Reconditioned/Spot Reconstructed.

—Construct one temporary road, aproximately one-half mile long.

—Use approximately 14 miles of existing system road and less than one mile of non-system ronte as haul routes.

—Implement additional actions on several system routes including replacement of 5 culverts, addition of one culvert, replacement of 2 fords with culverts, and hardening/armoring of 2 stream crossings.

—Treat units in Aspen, Douglas-Fir, Sagebrush-Grassland, Mountain Mahogany, and High-Elevation Mixed Conifer in approximately 2,821 acres in two Inventoried Roadless Area (IRA's), Call Mountain and East Pioneer. Treatments would include lop and scatter, slashing, pile burning, jackpot burning, underburning, "daylighting" with chainsaws, and mastication. All the trees to be cut

would be generally small-diameter trees. No commercial recovery of any by-products of these treatments is proposed in the IRA's. One replacement of a ford with a culvert would also occur in the Call Mountain IRA.

—Treat two units, one Aspen and one High-Elevation Mixed Conifer, totaling 46.8 acres in the Torrey Mountain Recommended Wilderness. The Aspen would be treated with lop and scatter and the High-Elevation Mixed Conifer would be treated with daylighting of the Whitebark Pine with chainsaws only.

Possible Alternatives

1—*No Action Alternative.* Under this alternative there would be no treatment of the vegetation communities. Roads would not be reconditioned or reconstructed, and no culverts or fords would be replaced. Many of the proposed units will continue to have encroachment from conifers, decreased age class diversity, poor vigor, and higher susceptibility to insect and disease such as mountain pine beetle and blister rust.

Responsible Official

The Dillon District Ranger will be the responsible official.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action, another alternative, or a combination of the alternatives.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The project scoping map, as well as other project documents, can be viewed on the BDNF Web site at the following address: *http://www.fs.usda.gov/projects/bdnf/landmanagement/projects.* Hard copies may also be viewed at the Dillon District office in Dillon, MT or can be mailed upon request. To request hard or CD copies please contact Alex Dunn at (406) 683–3864 or *adunn@fs.fed.us.* It is important that reviewers provide their comments at such times and in such a 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 anonymous comments will not provide the Agency with the ability to provide the responder with subsequent environmental documentation.

Dated: March 5, 2013.

Cole Mayn,

Acting Dillon District Ranger.

[FR Doc. 2013–05574 Filed 3–11–13; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Texas Advisory Committee (Committee) will convene on Wednesday, April 3, 2013, at 1:30 p.m. and adjourn at approximately 3:30 p.m. The meeting will be held at the Looscan Neighborhood Library, 2510 Willowick road, Houston, TX 77027.

The purpose of the meeting is for the Committee to receive orientation and ethic training and plan future activities. Orientation and ethics training is the first item on the agenda. After those two items are completed, the next item on the agenda is the Committee's consideration of future issues for study and alternate reporting formats.

The meeting is open to the public. Members of the public are also entitled to submit written comments. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 1020 Los Angeles, CA 90012. They may also be emailed to the Commission at *atrevino@usccr.gov.* Comments must be received by May 3, 2013. Persons who desire additional information may contact Angelica Trevino of the Western Regional Office at (213) 894–3437. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 6, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–05565 Filed 3–11–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–88–2012]

Foreign-Trade Zone 84—Houston, Texas, Authorization of Production Activit, Mitsubishi Caterpillar Forklift America Inc. (Forklift Trucks), Houston, TX

On November 2, 2012, the Port of Houston Authority, grantee of FTZ 84, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Mitsubishi Caterpillar Forklift America Inc., in Houston, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 74170–74171, 12–13–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: March 5, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05648 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2013]

Notification of Proposed Production Activity TTI, Inc.; Subzone 196A (Electromechanical and Circuit Protection Devices Production/Kitting); Fort Worth, TX

TTI, Inc. (TTI), operator of Subzone 196A, submitted a notification of proposed production activity for its facilities located in Fort Worth, Texas. The notification conforming to the requirements of the regulations of the

Foreign Trade-Zones Board (the Board) (15 CFR 400.22) was received on February 13, 2013.

The TTI facilities are located within Subzone 196A at 2601 Sylvania Cross Drive and 2441 Northeast Parkway, Fort Worth (Tarrant County), Texas. The facilities are used for electromechanical and circuit protection device production/kitting for a variety of commercial, aerospace and military applications. Pursuant to 15 CFR 400.14(b) of the regulations, FTZ activity would be limited to the specific foreign-status materials and components and specific finished products included in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt TTI from customs duty payments on the foreign status components used in export production. On its domestic sales, TTI would be able to choose the duty rates during customs entry procedures that apply to resistors, capacitors, connectors, discretes, potentiometers, trimmers, magnetic and circuit protection components, wire and cable, wire and cable identification markers, application tools for crimping, insertion/extraction, and terminal removal, and electromechanical devices (duty rates range from free to 3.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Rubber and plastic gaskets, washers, and seals; circuit protection devices (including connectors); molded parts for connector assemblies; metal contacts; plastic fittings; insulators (including, quartz, Teflon, silicon and ceramic); base metal insulating materials (including electrical conduit tubing); electrical circuit switching and protection components; and iron and steel wire components (duty rates range from free to 5.3%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 22, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: March 7, 2013.

Executive Secretary.

[FR Doc. 2013–05661 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1887]

Reorganization and Expansion of Foreign-Trade Zone 171 Under Alternative Site Framework; Liberty County, TX

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

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

Whereas, Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, submitted an application to the Board (FTZ Docket B–85–2012, docketed 11/14/2012) for authority to reorganize and expand under the ASF with a service area of Liberty and Chambers Counties, Texas, within and adjacent to the Houston Customs and Border Protection port of entry, FTZ 171's Sites 1, 2, 3 and 9 would be removed from the zone, existing Sites 4, 5, 6, 7 and 8 would be categorized as magnet sites, and the grantee proposes a new magnet site (Site 10);

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 69789, 11/21/2012) 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;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 171 under the ASF 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, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 4, 5, 6, 7, 8 and 10 if not activated by March 30, 2018.

Signed at Washington, DC, this March 5, 2013.

Paul Piquado,

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

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05660 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–3–2013]

Approval of Subzone Status, Expeditors International of Washington, Inc.; El Paso, TX

On January 7, 2013, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of El Paso, grantee of FTZ 68, requesting subzone status subject to the existing activation limit of FTZ 68, on behalf of Expeditors International of Washington, Inc., in El Paso, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 4124, 1/18/2013). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 68A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 68's 2,000-acre activation limit.

Dated: March 5, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–05650 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective March 12, 2013.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on certain preserved mushrooms (mushrooms) from the People's Republic of China (PRC) covering the period of review (POR) February 1, 2011, through January 31, 2012. We preliminarily determine that sales made by Blue Field (Sichuan) Food Industrial Co. (Blue Field) were below normal value (NV). With respect to Dujiangyan Xingda Foodstuff Co., Ltd. (Xingda) and Zhejiang Iceman Group Co., Ltd./Zhejiang Iceman Food Co., Ltd. (Iceman),[1] these companies failed to establish that they are separate from the PRC-wide entity. As a result, the PRC-wide entity is now under review. We have preliminarily applied adverse facts available ("AFA") to the PRC-wide entity because elements of the entity, Xingda and Iceman, failed to act to the best of their ability in complying with the Department's request for information in this review within the established deadlines and significantly impeded the proceeding. We invite interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this antidumping order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved Mushrooms" refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Review

For those companies named in the *Initiation Notice*[2] for which all review requests have been withdrawn and are not part of the PRC-wide entity, we are rescinding this administrative review, in accordance with 19 CFR 351.213(d)(1). The companies for which we are rescinding this review include: (1) Guangxi Jisheng Foods, Inc. (Jisheng), (2) Xiamen International Trade & Industrial Co., Ltd. (XITIC), (3) Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and (4) Zhangzhou Gangchang Canned Foods Co., Ltd.[3] (Zhangzhou Gangchang).

Intent Not To Rescind Review in Part

We have received withdrawal of review requests for the following companies that remain a part of the PRC-wide entity, which is currently under review: (1) China National Cereals, Oils & Foodstuffs Import & Export Corp. (China National), (2) China Processed Food Import & Export Co. (China Processed), (3) Fujian Pinghe Baofeng Canned Foods (Fujian Pinghe), (4) Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd. (Fujian Yuxing), (5) Fujian Zishan Group Co., Ltd. (Fujian Zishan), (6) Guangxi Eastwing Trading Co., Ltd. (Guangxi Eastwing), (7) Inter-Foods (Dongshan) Co., Ltd. (Inter-Foods), (8) Longhai Guangfa Food Co., Ltd.(Longhai Guangfa), (9) Primera Harvest (Xiangfan) Co., Ltd. (Primera Harvest), (10) Shandong Fengyu Edible Fungus Corporation Ltd. (Shandong Fengyu), (11) Sun Wave Trading Co., Ltd. (Sun Wave Trading), (12) Xiamen Greenland Import & Export Co., Ltd. (Xiamen Greenland), (13) Xiamen Gulong Import & Export Co., Ltd. (Xiamen Gulong), (14) Xiamen Jiahua Import & Export Trading Co., Ltd. (Xiamen Jiahua), (15) Xiamen Longhuai Import & Export Co., Ltd. (Xiamen Longhuai), and (16) Zhangzhou Long Mountain Food Co., Ltd. (Zhangzhou Long Mountain) and (17) Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Zhangzhou Golden Banyan).[4]

For those companies named in the *Initiation Notice*[5] for which all review requests have been withdrawn, but which have not previously received separate rate status, the Department's practice is to refrain from rescinding the review with respect to these companies at this time. As explained above, requests for review of several companies belonging to the PRC-wide entity were timely withdrawn. While the requests for review were timely withdrawn, the companies remain part of the PRC-wide entity. The PRC-wide entity is under review for these preliminary results. Therefore, at this time, we are not rescinding this review with respect to those companies belonging to the PRC-wide entity for which a request for review has been withdrawn.

Preliminary Determination of No Shipments

The following companies submitted timely certifications of no shipments during the POR: (1) Guangxi Hengyong Industrial & Commercial Dev., Ltd. (Guangxi Hengyong), (2) Zhangzhou Tongfa Foods Industry Co., Ltd (Zhangzhou Tongfa), (3) Zhangzhou Hongda Import & Export Trading Co., Ltd. (Zhangzhou Hongda), and (4) Golden Banyan. Based on the no-shipment certifications and our analysis of the CBP information, we preliminary determine that Guangxi Hengyong, Zhangzhou Tongfa, Zhangzhou Hongda, and Golden Banyan 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

[1] The Department has found Zhejiang Iceman Food Co., Ltd. should be equated with Zhejiang Iceman Group Co., Ltd. *See Certain Preserved Mushrooms From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 70112 (November 10, 2011).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review*, 77 FR 19179 (March 30, 2012) (*Initiation Notice*).

[3] Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian was found to be the name of the company initially referenced by that party and the Department as Zhangzhou Gangchang Canned Foods Co., Ltd. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews* 74 FR 14772 (April 1, 2009) unchanged at *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews* 74 FR 28882 (June 18, 2009).

[4] The Department considers Zhangzhou Golden Banyan to be distinct from another company with a similar name for which a review was requested, Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan). In the immediately-preceding review, the Department calculated a separate rate for Golden Banyan, while it considered Zhangzhou Golden Banyan to remain a part of the PRC-wide entity. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012).

[5] *See Initiation Notice*, 77 FR 19179.

non-market economy (NME) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to Guangxi Hengyong, Zhangzhou Tongfa, Zhangzhou Hongda, and Golden Banyan and issue appropriate instructions to CBP based on the final results of the review.[6]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export price is 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, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, the respondent's factors of production have been valued using Colombian prices (when available); Colombia is economically comparable to the PRC and a significant producer of comparable merchandise. For a full description of these surrogate values and the methodology underlying our conclusions, please see the memoranda entitled "Memorandum for the Preliminary Results in the Administrative Review: Certain Preserved Mushrooms from the People's Republic of China" (Preliminary Results Decision Memorandum) and "Certain Preserved Mushrooms from the People's Republic of China: Surrogate-Value Memorandum" both of which are dated concurrently with this notice and incorporated herein by reference. The Preliminary Results 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 Results Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov.ia*. The signed and electronic versions of the Preliminary Results Decision Memorandum are identical in content.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2011, through January 31, 2012:

Exporter	Weighted-average margin (percent)
Blue Field (Sichuan) Food Industrial Co	102.11
PRC-wide entity [7]	308.33

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[8] Interested parties may submit written comments no later than 30 days after publication of the preliminary results. Rebuttals to written comments may be filed no later than five days after the written comments are filed.[9]

Any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[10]

The Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any such comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production (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 generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[11] 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.[12]

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[13]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The Department recently announced a refinement to its

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[7] The PRC-wide entity includes, among other companies: Dujiangyan Xingda Foodstuffs Co., Ltd., (Xingda) Ayecue (Liaocheng) Foodstuffs Co., Ltd. (Ayecue), Shandong Jiufa Edible Fungus Corporation, Ltd., (Shandong Jiufa), and Zhejiang Iceman Group Co., Ltd. (Iceman).

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(c) and (d).

[10] *See* 19 CFR 351.310(c).

[11] *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.

[12] *See* 19 CFR 351.301(c)(3).

[13] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-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.[14]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

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) The cash deposit rate for Blue Field, will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for any previously reviewed or investigated PRC and non-PRC exporter not listed above that received a separate rate in a previous segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity (*i.e.*, 308.33 percent); 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 the non-PRC exporter. These cash deposit 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Topics Discussed in the Preliminary Results Decision Memorandum

1. Background
2. Respondent Selection
3. Scope of the Order
4. Partial Rescission of Review
5. Intent Not To Rescind Review in Part
6. Preliminary Determination of No Shipments
7. Non-Market Economy Country Status
8. Separate Rates Determination
9. Absence of De Jure Control
10. Absence of De Facto Control
11. The PRC-Wide Entity
12. Adverse Facts Available
13. Surrogate Country
14. Fair Value Comparisons
15. U.S. Price
16. Normal Value
17. Factors Valuation
18. Currency Conversion
19. Conclusion

[FR Doc. 2013–05643 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke the Order (in Part); 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand with respect to 150 [1] companies. The respondents which the Department selected for individual examination are Marine Gold Products Limited (Marine Gold), and Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. (collectively, Thai Union).[2] The period of review (POR) is February 1, 2011, through January 31, 2012.

We have preliminarily determined that sales to the United States have been made at prices below normal value. We have also preliminarily determined to revoke the antidumping duty order with respect to shrimp from Thailand produced and exported by Marine Gold. Finally, the Department also preliminarily determines that 11 additional exporters made no shipments of subject merchandise during the POR. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Dennis McClure, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[3] The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written

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[1] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011)

[1] This figure does not include those companies for which the Department is rescinding the administrative review.

[2] In the 2006–2007 administrative review, the Department found that the following companies comprised a single entity: Thai Union Frozen Products Public Co., Ltd. and Thai Union Seafood Co., Ltd. *See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12088 (March 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[3] See the "Decision Memorandum for Preliminary Results of Review for the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," (Preliminary Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results, for a complete description of the Scope of the Order.

product description, available in *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders*, 76 FR 23972 (April 29, 2011), remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price/constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of Marine Gold and Thai Union in the most recent administrative reviews completed for these companies before the initiation of this review. Therefore, we have reasonable grounds to believe or suspect that Marine Gold's and Thai Union's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Accordingly, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of Marine Gold's and Thai Union's sales in Thailand in this review. Based on this test, we disregarded certain sales made by Marine Gold and Thai Union in the home market which were made at below-cost prices.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted by this notice. 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). Access to IA ACCESS is available in the Central Records Unit (CRU), 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 Determination of No Shipments

Among the companies under review, 13 companies [1] reported that they made no shipments of subject merchandise to the United States during the POR.[5] Based on the certifications of the following companies and our analysis of CBP information, we preliminarily determine that the following companies did not have any reviewable transactions during the POR:

(1) Anglo-Siam.
(2) Daedong.
(3) Leo Transport.
(4) Grobest.
(5) Lucky Union.
(6) Namprick.
(7) S&P.
(8) S.K. Foods.
(9) Siamchai.
(10) Thai Union Manufacturing.
(11) V. Thai.

In addition, the Department finds that it is not appropriate to preliminarily rescind the review with respect to these companies but, rather, to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.[6]

Finally, the Department received no shipment certifications from two additional companies, C Y Frozen Food Co., Ltd. (C Y Frozen Food) and Kosamut Frozen Foods Co., Ltd. (Kosamut). We preliminarily find that there is insufficient evidence on the record of this review to conclude that these companies made no shipments of subject merchandise to the United States during the POR because: (1) C Y Frozen Foods failed to certify its statement of no shipments in accordance with 19 CFR 351.303(g)(1), despite the Department's request that it do so; and (2) Kosamut's no shipment statement related only to its own exports and not those of another affiliated exporter which has to date been treated as the same entity as Kosamut for cash deposit purposes.[7] Therefore, we are continuing to include both C Y Frozen Foods and Kosamut in this administrative review for purposes of the preliminary results.

Preliminary Intent To Revoke

On February 1, 2012, Marine Gold requested revocation of the order on shrimp from Thailand as it pertains to its sales. Pursuant to 19 CFR 351.222(b)(2),[8] the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping.

With regard to the criteria of 19 CFR 351.222(b)(2), based on our examination of the sales data submitted by Marine Gold, we preliminarily determine that it sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Marine Gold to support its request for revocation.[9] Moreover, we preliminarily find that Marine Gold did not engage in dumping during the same three years under consideration.[10] Therefore, we preliminarily determine that Marine Gold's exports of subject merchandise qualify for revocation from the order pursuant to 19 CFR 351.222(b)(2).

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[1] These companies are Anglo-Siam Seafoods Ltd. (Anglo-Siam), Daedong (Thailand) Co. Ltd. (Daedong), Leo Transport Corporation Ltd. (Leo Transport), Grobest Frozen Foods Co. (Grobest), Ltd., Lucky Union Foods Co., Ltd. (Lucky Union), Namprick Maesri Ltd. Part. (Namprick), S&P Syndicate Public Company Ltd. (S&P), S.K. Foods (Thailand) Public Co. Limited (S.K. Foods), Siamchai International Food Co., Ltd. (Siamchai), Thai Union Manufacturing Company Limited (Thai Union Manufacturing), and V. Thai Food Product Co., Ltd. (V. Thai).

[5] For a full explanation of the Department's analysis, see the Preliminary Decision Memorandum.

[6] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 8493 (February 6, 2013).

[7] After reviewing the data submitted by Kosamut regarding its relationship with its affiliated exporter, we have determined that we need additional information from Kosamut before evaluating its no shipments claim. We intend to request this information and consider it in our final results.

[8] The Department recently modified the section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that modification does not apply to this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) refers to the Department's regulations prior to the modification.

[9] *See* the Memorandum to the File, from Blaine Wiltse, Senior Analyst, Office 2, AD/CVD Operations, entitled, "Analysis of Commercial Quantities for Marine Gold Products Limited's Request for Revocation," dated March 4, 2013.

[10] *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881, 40883 (July 12, 2011); *see also* the "Preliminary Determination To Revoke Order, In Part" section in the Preliminary Decision Memorandum.

Preliminary Rescission, in Part

On February 29, 2012, the petitioner requested that the Department review entries of Tanaya International Co., Ltd. and Tanaya Intl. (collectively, Tanaya). On April 27, 2012, we received a letter from Tanaya stating that it does not produce or export shrimp, nor has it ever produced or exported the subject merchandise. On February 14, 2013, Tanaya properly certified this submission, in accordance with 19 CFR 351.303(g)(1), at the Department's request.

According to 19 CFR 351.213(b), the Department conducts administrative reviews on exporters or producers covered by an order. In this particular situation, Tanaya is neither an exporter nor manufacturer of the subject merchandise. Furthermore, Tanaya has made no entries, exports, or sales of the subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding the review with respect to Tanaya.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for Marine Gold and Thai Union for the period February 1, 2011, through January 31, 2012, are as follows:

Manufacturer/exporter	Percent margin
Marine Gold	0.00
Thai Union	0.51

Review-Specific Average Rate Applicable to the Following Companies: [1]

Manufacturer/exporter	Percent margin
A Foods 1991 Co., Ltd	0.51
A. Wattanachai Frozen Products Co., Ltd	0.51
A.S. Intermarine Foods Co., Ltd	0.51
ACU Transport Co., Ltd	0.51
Anglo-Siam Seafoods Co., Ltd	*
Apex Maritime (Thailand) Co., Ltd	0.51
Apitoon Enterprise Industry Co., Ltd	0.51
Applied DB	0.51
Asian Seafood Coldstorage (Sriracha)	0.51
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	0.51
Assoc. Commercial Systems	0.51
B.S.A. Food Products Co., Ltd	0.51
Bangkok Dehydrated Marine Product Co., Ltd	0.51
C Y Frozen Food Co., Ltd	0.51
C.P. Retailing and Marketing Co., Ltd	0.51
Calsonic Kansei (Thailand) Co., Ltd	0.51
Century Industries Co., Ltd	0.51
Chaivaree Marine Products Co., Ltd	0.51
Chaiwarut Company Limited	0.51
Charoen Pokphand Foods Public Company Limited	0.51
Chonburi LC	0.51
Chue Eie Mong Eak Ltd. Part	0.51
Commonwealth Trading Co., Ltd	0.51
Core Seafood Processing Co., Ltd	0.51
CP Merchandising Co., Ltd[3]	0.51
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood	0.51
Daedong (Thailand) Co. Ltd	*
Daiei Taigen (Thailand) Co., Ltd	0.51
Daiho (Thailand) Co., Ltd	0.51
Dynamic Intertransport Co., Ltd	0.51
Earth Food Manufacturing Co., Ltd	0.51
F.A.I.T. Corporation Limited	0.51
Far East Cold Storage Co., Ltd	0.51
Findus (Thailand) Ltd	0.51
Fortune Frozen Foods (Thailand) Co., Ltd	0.51
Frozen Marine Products Co., Ltd	0.51
Gallant Ocean (Thailand) Co., Ltd	0.51
Gallant Seafoods Corporation	0.51
Global Maharaja Co., Ltd	0.51
Golden Sea Frozen Foods Co., Ltd	0.51
Golden Thai Imp. & Exp. Co., Ltd	0.51
Good Fortune Cold Storage Co. Ltd	0.51
Good Luck Product Co., Ltd	0.51
Grobest Frozen Foods Co., Ltd	*
GSE Lining Technology Co., Ltd	0.51
Gulf Coast Crab Intl	0.51
H.A.M. International Co., Ltd	0.51
Haitai Seafood Co., Ltd	0.51
Handy International (Thailand) Co., Ltd	0.51
Heng Seafood Limited Partnership	0.51
Heritrade Co., Ltd	0.51

[1] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available.

Manufacturer/exporter	Percent margin
HIC (Thailand) Co., Ltd	0.51
High Way International Co., Ltd	0.51
I.T. Foods Industries Co., Ltd	0.51
Inter-Oceanic Resources Co., Ltd	0.51
Inter-Pacific Marine Products Co., Ltd	0.51
K & U Enterprise Co., Ltd	0.51
K Fresh	0.51
K. D. Trading Co., Ltd	0.51
K.L. Cold Storage Co., Ltd	0.51
KF Foods Limited	0.51
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	0.51
Kibun Trdg	0.51
Kingfisher Holdings Ltd	0.51
Kitchens of the Oceans (Thailand) Company, Limited	0.51
Klang Co., Ltd	0.51
Kongphop Frozen Foods Co., Ltd	0.51
Kosamut Frozen Foods Co., Ltd./The Siam Union Frozen Foods Co., Ltd	0.51
Lee Heng Seafood Co., Ltd	0.51
Leo Transports	*
Li-Thai Frozen Foods Co., Ltd	0.51
Lucky Union Foods Co., Ltd	*
Maersk Line	0.51
Magnate & Syndicate Co., Ltd	0.51
Mahachai Food Processing Co., Ltd	0.51
Merit Asia Foodstuff Co., Ltd	0.51
Merkur Co., Ltd	0.51
Ming Chao Ind Thailand	0.51
N&N Foods Co., Ltd	0.51
NR Instant Produce Co., Ltd	0.51
Namprik Maesri Ltd. Part	*
Narong Seafood Co., Ltd	0.51
Nongmon SMJ Products	0.51
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd	0.51
Pacific Queen Co., Ltd	0.51
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co.,Ltd./Okeanos Food Co., Ltd./Takzin Samut Co., Ltd [12]	0.51
Penta Impex Co., Ltd	0.51
Pinwood Nineteen Ninety Nine	0.51
Piti Seafood Co., Ltd	0.51
Premier Frozen Products Co., Ltd	0.51
Preserved Food Specialty Co., Ltd	0.51
Queen Marine Food Co., Ltd	0.51
Rayong Coldstorage (1987) Co., Ltd	0.51
S&D Marine Products Co., Ltd	0.51
S&P Aquarium	0.51
S&P Syndicate Public Company Ltd	*
S. Chaivaree Cold Storage Co., Ltd	0.51
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind. Public	0.51
S.K. Foods (Thailand) Public Co. Limited	*
Samui Foods Company Limited	0.51
SB Inter Food Co., Ltd	0.51
SCT Co., Ltd	0.51
Sea Bonanza Food Co., Ltd	0.51
SEA NT'L CO., Ltd	0.51
Seafoods Enterprise Co., Ltd	0.51
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	0.51
Search & Serve	0.51
Shianlin Bangkok Co., Ltd	0.51
Shing Fu Seaproducts Development Co	0.51
Siam Food Supply Co., Ltd	0.51
Siam Intersea Co., Ltd	0.51
Siam Marine Products Co., Ltd	0.51
Siam Ocean Frozen Foods Co., Ltd	0.51
Siamchai International Food Co., Ltd	*
Smile Heart Foods	0.51
SMP Products, Co., Ltd	0.51
Southport Seafood Co., Ltd	0.51
Star Frozen Foods Co., Ltd	0.51
Starfoods Industries Co., Ltd	0.51
Suntechthai Intertrading Co., Ltd	0.51
Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd	0.51
Surapon Nichirei Foods Co., Ltd	0.51
Suratthani Marine Products Co., Ltd	0.51

Manufacturer/exporter	Percent margin
Suree Interfoods Co., Ltd	0.51
T.S.F. Seafood Co., Ltd	0.51
Tep Kinsho Foods Co., Ltd	0.51
Teppitak Seafood Co., Ltd	0.51
Tey Seng Cold Storage Co., Ltd	0.51
Thai Agri Foods Public Co., Ltd	0.51
Thai Mahachai Seafood Products Co., Ltd	0.51
Thai Ocean Venture Co., Ltd	0.51
Thai Patana Frozen	0.51
Thai Prawn Culture Center Co., Ltd	0.51
Thai Royal Frozen Food Co., Ltd	0.51
Thai Spring Fish Co., Ltd	0.51
Thai Union Manufacturing Company Limited	*
Thai World Imports and Exports Co., Ltd	0.51
Thai Yoo Ltd., Part	0.51
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd	0.51
Trang Seafood Products Public Co., Ltd	0.51
Transamut Food Co., Ltd	0.51
Tung Lieng Tradg	0.51
United Cold Storage Co., Ltd	0.51
V. Thai Food Product Co., Ltd	*
Xian-Ning Seafood Co., Ltd	0.51
Yeenin Frozen Foods Co., Ltd	0.51
YHS Singapore Pte	0.51
ZAFCO TRDG	0.51

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[13] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice or one week after the issuance of the last verification report for Marine Gold. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15] Case and rebuttal briefs should be filed using IA ACCESS.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[17] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1).

For Marine Gold and Thai Union, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales.[18]

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for mandatory review (*i.e.*, Marine Gold and Thai Union).

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[19]

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Marine Gold and Thai Union for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed

[12] In the 2007–2008 administrative review, the Department found that the following companies comprised a single entity: Paklood Public Company Limited, Asia Pacific (Thailand) Co., Ltd., Chaophraya Cold Storage Co. Ltd., Okeanos Co. Ltd., Okeanos Food Co. Ltd., and Takzin Samut Co. Ltd. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying Issues and Decision memorandum at Comment 6. Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See* 19 CFR 351.303.

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CF 351.212(b)(1).

[19] *See* section 751(a)(2)(C) of the Act.

entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the Section 129 Determination.[20] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination To Revoke Order, In Part
5. Preliminary Determination of No Shipments
6. Preliminary Rescission of Review, In Part
7. Discussion of the Methodology
   a. Normal Value Comparisons
   b. Targeted Dumping
   c. Results of Targeted Dumping Analysis
   d. Product Comparisons
   e. Date of Sale
   f. Export Price/Constructed Export Price
   g. Normal Value
   h. Currency Conversion
8. Recommendation

[FR Doc. 2013–05665 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India; Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. The review covers 195 producers/exporters of the subject merchandise. The Department selected two mandatory respondents for individual examination, Apex Frozen Foods Private Limited [1] (Apex) and Devi Fisheries Limited (Devi Fisheries),[2] and accepted a voluntary response from a third, Falcon Marine Exports Limited/K.R. Enterprises (Falcon). The period of review (POR) is February 1, 2011, through January 31, 2012. We have preliminarily determined that sales to the United States have been made below normal value, and, therefore, are subject to antidumping duties. The Department also preliminarily determines that Baby Marine International and Baby Marine Sarass made no shipments of subject merchandise during the POR. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Henry Almond or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0049, or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[3] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court*

[20] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand*, 74 FR 5638 (January 30, 2009) (Section 129 Determination).

[1] On December 11, 2012, the Department determined that Apex Frozen Foods Private Limited is the successor-in-interest to Apex Exports. *See Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India*, 77 FR 73619 (December 11, 2012).

[2] On September 13, 2012, we determined that it was appropriate to collapse Devi Fisheries and its affiliates, Satya Seafoods Private Limited and Usha Seafoods, and as a result we are treating these three companies as a single entity. *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "Whether to Collapse Devi Fisheries Limited, Satya Seafoods Private Limited, and Usha Seafoods in the 2011–2012 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," dated September 13, 2012.

[3] *See* the "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India," (Preliminary Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results, for a complete description of the Scope of the Order.

Decision, 76 FR 23277 (April 26, 2011), remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price/constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of Apex and Falcon to their respective comparison markets (*i.e.*, the United Kingdom and Japan) in the most recent administrative reviews these companies completed before the initiation of this review. Additionally, based on our analysis of the American Shrimp Processors Association's allegation that Devi Fisheries made sales to its third country market (*i.e.*, Belgium) during the POR that were below the COP, we found that Devi Fisheries' sales to Belgium which fell below the COP were representative of the broader range of models which may be used as a basis for NV. Therefore, we have reasonable grounds to believe or suspect that Apex's, Devi Fisheries', and Falcon's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Accordingly, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of all three respondents' sales in the comparative markets in this review. Based on this test, we disregarded certain sales made by Apex, Devi Fisheries, and Falcon in their respective comparison markets which were made at below-cost prices.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, which is hereby adopted by this notice. 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 (CRU), 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 version of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

Among the companies under review, two companies (*i.e.*, Baby Marine International and Baby Marine Sarass) reported that they made no shipments of subject merchandise to the United States during the POR.[4]

Based on the certifications of these companies and our analysis of CBP information, we preliminarily determine that Baby Marine International and Baby Marine Sarass did not have any reviewable transactions during the POR. In addition, the Department finds that it is not appropriate to rescind the review with respect to these two companies but, rather, to complete the review with respect to them and issue appropriate instructions to CBP based on the final results of this review.[5]

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2011, through January 31, 2012, as follows:

Manufacturer/exporter	Percent margin
Apex Frozen Foods Private Limited	3.49
Devi Fisheries Limited/Satya Seafoods Private Limited/Satya Seafoods Private Limited	3.05
Falcon Marine Exports Limited/K.R. Enterprises	0.00

Review-Specific Average Rate Applicable to the Following Companies:[6]

Manufacturer/exporter	Percent margin
Abad Fisheries Pvt. Ltd	3.23
Accelerated Freeze-Drying Co	3.23
Adilakshmi Enterprises	3.23
Allana Frozen Foods Pvt. Ltd	3.23
Allansons Ltd	3.23
AMI Enterprises	3.23
Amulya Seafoods	3.23
Anand Aqua Exports	3.23
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	3.23
Andaman Sea Foods Private Limited[7]	3.23
Angelique Intl	3.23
Anjaneya Seafoods	3.23
Arvi Import & Export	3.23
Asvini Exports	3.23

[4] For a full explanation of the Department's analysis, see the *Preliminary Decision Memorandum*.

[5] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 8493 (February 6, 2013).

[6] This rate is based on the average of the margins calculated for Apex and Devi Fisheries (*i.e.*, those companies selected for mandatory review), weighted by each company's publicly-ranged quantity of reported U.S. transactions. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. Further, pursuant to 19 CFR 351.204(d)(3), we have not included Falcon's weighted-average dumping margin in our calculation of the review-specific average rate.

Manufacturer/exporter	Percent margin
Asvini Fisheries Private Limited	3.23
Avanti Feeds Limited	3.23
Ayshwarya Seafood Private Limited	3.23
Baby Marine Exports	3.23
Baby Marine International	*
Baby Marine Sarass	*
Bhatsons Aquatic Products	3.23
Bhavani Seafoods	3.23
Bijaya Marine Products	3.23
Blue Fin Frozen Foods Pvt. Ltd	3.23
Blue Water Foods & Exports P. Ltd	3.23
Bluefin Enterprises	3.23
Bluepark Seafoods Private Ltd	3.23
BMR Exports	3.23
Britto Exports	3.23
C P Aquaculture (India) Ltd	3.23
Calcutta Seafoods Pvt. Ltd	3.23
Capithan Exporting Co	3.23
Castlerock Fisheries Ltd	3.23
Chemmeens (Regd)	3.23
Cherukattu Industries (Marine Division) [8]	3.23
Choice Canning Company	3.23
Choice Trading Corporation Private Limited	3.23
Coastal Corporation Ltd	3.23
Cochin Frozen Food Exports Pvt. Ltd	3.23
Coreline Exports	3.23
Corlim Marine Exports Pvt. Ltd	3.23
Damco India Private	3.23
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited	3.23
Devi Sea Foods Limited [9]	3.23
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company	3.23
Digha Seafood Exports	3.23
Esmario Export Enterprises	3.23
Exporter Coreline Exports	3.23
Five Star Marine Exports Private Limited	3.23
Forstar Frozen Foods Pvt. Ltd	3.23
Frontline Exports Pvt. Ltd	3.23
G A Randerian Limited	3.23
Gadre Marine Exports	3.23
Galaxy Maritech Exports P. Ltd	3.23
Gayatri Seafoods	3.23
Geo Aquatic Products (P) Ltd	3.23
Geo Seafoods	3.23
Grandtrust Overseas	3.23
Goodwill Enterprises	3.23
GVR Exports Pvt. Ltd	3.23
Haripriya Marine Export Pvt. Ltd	3.23
Harmony Spices Pvt. Ltd	3.23
HIC ABF Special Foods Pvt. Ltd	3.23
Hindustan Lever, Ltd	3.23
Hiravata Ice & Cold Storage	3.23
Hiravati Exports Pvt. Ltd	3.23
Hiravati International Pvt. Ltd (located at APM–Mafco Yard, Sector–18, Vashi, Navi, Mumbai–400 705, India)	3.23
Hiravati International Pvt. Ltd (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	3.23
IFB Agro Industries Ltd	3.23
Indian Aquatic Products	3.23
Indo Aquatics	3.23
Innovative Foods Limited	3.23
International Freezefish Exports	3.23
Interseas	3.23
ITC Limited, International Business	3.23
ITC Ltd	3.23
Jagadeesh Marine Exports	3.23
Jaya Satya Marine Exports	3.23
Jaya Satya Marine Exports Pvt. Ltd	3.23
Jayalakshmi Sea Foods Private Limited	3.23
Jinny Marine Traders	3.23
Jiya Packagings	3.23
K R M Marine Exports Ltd	3.23
K.V. Marine Exp	3.23
Kalyan Aqua & Marine Exp. India Pvt. Ltd	3.23
Kalyanee Marine	3.23

Manufacturer/exporter	Percent margin
Kanch Ghar	3.23
Kay Kay Exports	3.23
Kings Marine Products	3.23
Koluthara Exports Ltd	3.23
Konark Aquatics & Exports Pvt. Ltd	3.23
Landauer Ltd	3.23
Libran Cold Storages (P) Ltd	3.23
Lighthouse Trade Links Pvt. Ltd	3.23
Magnum Estates Limited	3.23
Magnum Export	3.23
Magnum Sea Foods Limited	3.23
Malabar Arabian Fisheries	3.23
Malnad Exports Pvt. Ltd	3.23
Mangala Marine Exim India Pvt. Ltd	3.23
Mangala Sea Products	3.23
Meenaxi Fisheries Pvt. Ltd	3.23
MSC Marine Exporters	3.23
MSRDR Exports	3.23
MTR Foods	3.23
N.C. John & Sons (P) Ltd	3.23
Naga Hanuman Fish Packers	3.23
Naik Frozen Foods	3.23
Naik Frozen Foods Pvt., Ltd	3.23
Naik Seafoods Ltd	3.23
Navayuga Exports	3.23
Nekkanti Sea Foods Limited	3.23
Nila Sea Foods Pvt. Ltd	3.23
Nine Up Frozen Foods	3.23
Overseas Marine Export	3.23
Paragon Sea Foods Pvt. Ltd	3.23
Parayil Food Products Pvt., Ltd	3.23
Penver Products (P) Ltd	3.23
Pesca Marine Products Pvt., Ltd	3.23
Pijikay International Exports P Ltd	3.23
Pisces Seafoods International	3.23
Premier Exports International	3.23
Premier Marine Foods	3.23
Premier Seafoods Exim (P) Ltd	3.23
R V R Marine Products Private Limited	3.23
Raa Systems Pvt. Ltd	3.23
Raju Exports	3.23
Ram's Assorted Cold Storage Ltd	3.23
Raunaq Ice & Cold Storage	3.23
Raysons Aquatics Pvt. Ltd	3.23
Razban Seafoods Ltd	3.23
RBT Exports	3.23
RDR Exports	3.23
Riviera Exports Pvt. Ltd	3.23
Rohi Marine Private Ltd	3.23
S & S Seafoods	3.23
S Chanchala Combines	3.23
S. A. Exports	3.23
Safa Enterprises	3.23
Sagar Foods	3.23
Sagar Grandhi Exports Pvt. Ltd	3.23
Sagar Samrat Seafoods	3.23
Sagarvihar Fisheries Pvt. Ltd	3.23
SAI Marine Exports Pvt. Ltd	3.23
SAI Sea Foods	3.23
Sandhya Aqua Exports	3.23
Sandhya Aqua Exports Pvt. Ltd	3.23
Sandhya Marines Limited	3.23
Santhi Fisheries & Exports Ltd	3.23
Sarveshwari Exp.	3.23
Sarveshwari Ice & Cold Storage Pvt. Ltd	3.23
Sawant Food Products	3.23
Seagold Overseas Pvt. Ltd	3.23
Selvam Exports Private Limited	3.23
Sharat Industries Ltd	3.23
Shimpo Exports	3.23
Shimpo Exports Pvt. Ltd	3.23
Shippers Exports	3.23
Shiva Frozen Food Exp. Pvt., Ltd	3.23

Manufacturer/exporter	Percent margin
Shree Datt Aquaculture Farms Pvt. Ltd	3.23
Shroff Processed Food & Cold Storage P Ltd	3.23
Silver Seafood	3.23
Sita Marine Exports	3.23
Sowmya Agri Marine Exports	3.23
Sprint Exports Pvt. Ltd	3.23
Sri Chandrakantha Marine Exports	3.23
Sri Sakkthi Cold Storage	3.23
Sri Sakthi Marine Products P Ltd	3.23
Sri Satya Marine Exports	3.23
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	3.23
Srikanth International	3.23
SSF Ltd	3.23
Star Agro Marine Exports Private Limited	3.23
Sun Bio-Technology Limited	3.23
Suryamitra Exim (P) Ltd	3.23
Suvarna Rekha Exports Private Limited	3.23
Suvarna Rekha Marines P Ltd	3.23
TBR Exports Pvt Ltd	3.23
Teekay Marine P. Ltd	3.23
Tejaswani Enterprises	3.23
The Waterbase Ltd	3.23
Triveni Fisheries P Ltd	3.23
Uniroyal Marine Exports Ltd	3.23
V.S Exim Pvt Ltd	3.23
Veejay Impex	3.23
Victoria Marine & Agro Exports Ltd	3.23
Vinner Marine	3.23
Vishal Exports	3.23
Wellcome Fisheries Limited	3.23
West Coast Frozen Foods Private Limited	3.23
Z A Sea Foods Pvt. Ltd	3.23

[·] No shipments or sales subject to this review.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[10] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using IA ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[14] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1).

For Apex, Falcon, and Devi Fisheries, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales.[15]

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies

[·] The Department initiated this review under the name "Andaman Seafoods Pvt. Ltd." *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part*, 77 FR 19612 (April 2, 2012) (*Initiation Notice*). On April 23, 2012, the company notified the Department that its name is Andaman Sea Foods Private Limited. *See* Andaman Sea Foods Private Limited's April 23, 2012, submission.

[8] This company was listed in the *Initiation Notice* as "Cherukattu Industries." After receiving clarification from the company, we have made appropriate changes. *See* Cherukattu Industries (Marine Division)'s April 23, 2012, submission.

[9] The Department received a request for an administrative review of the antidumping order on shrimp from India with respect to Devi Sea Foods Limited (Devi). Shrimp produced and exported by Devi was excluded from this order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part*, 75 FR 41813, 41814 (July 19, 2010). However, shrimp produced by other Indian producers and exported by Devi remains subject to the order. Thus, this administrative review with respect to Devi covers only shrimp which was produced in India by other companies and exported by Devi.

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CF 351.212(b)(1).

selected for mandatory review (*i.e.*, Apex and Devi Fisheries) excluding any which are *de minimis* or determined entirely on adverse facts available.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[16]

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation.[17] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2013–05664 Filed 3–11–13; 8:45 am]

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[16] *See* section 751(a)(2)(C) of the Act.

[17] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147, 5148 (February 1, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"), covering the period of review ("POR") from February 1, 2011, through January 31, 2012. As discussed below, the Department preliminarily determines that Zhaojiang Regal Integrated Marine Resources Co., Ltd. ("Regal") did not make sales in the United States at prices below normal value ("NV") during the POR. Additionally, the Department preliminarily determines that Hilltop International ("Hilltop") failed to cooperate to the best of its ability in this review. The Department is finding Hilltop to be part of the PRC-wide entity to which we are applying adverse facts available ("AFA") as discussed below.

DATES: *Effective Date:* March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906 or (202) 482–5260 respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[1] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21.

[1] See the Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Warmwater Shrimp from the People's Republic of China." ("Preliminary Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results, for a complete description of the Scope of the Order.

0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011), remains dispositive.

PRC-Wide Entity

During the review, Hilltop notified the Department that it declined to answer further requests for information in this proceeding.[2] Accordingly, the Department will preliminarily treat Hilltop as part of the PRC-wide entity. Because the PRC-wide entity, which includes Hilltop, failed to cooperate by not acting to the best of its ability in this review, we are preliminarily applying adverse facts available ("AFA") to the PRC-wide entity, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the "Act").[3]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Act. Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. 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 ("CRU"), 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 Determination of No Shipments

On April 18, 2012, the Department received a "no shipment certification"[4] from Allied Pacific Food (Dalian) Co., Ltd. and Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (collectively "Allied Pacific Group").[5] On March 28, 2012, the Department received a properly filed "no shipment certification"[6] from Shanton Yuexing Enterprise Company ("SYEC"). In its certification, SYEC also requested that the Department rescind the review with respect to SYEC, pursuant to 19 CFR 351.213(d)(3).[7] On April 6, 2012, the Department received a properly filed "no shipment certification" from Rizhao Smart Foods Co., Ltd. ("Smart Foods").[8]

On April 20, 2012, the Department sent inquiries to U.S. Customs and Border Protection ("CBP") to determine whether CBP entry data is consistent with SYEC's and Allied Pacific Group's no shipments certifications and received no information contrary to that statement. On February 5, 2013, the Department sent an inquiry to CBP to determine whether CBP entry data consistent with Smart Foods no shipment certification and received no information contrary to that statement. As CBP only responds to the Department's inquiry when there are records of shipments from the company in question[9] and no party submitted comments, we preliminarily determine that SYEC, Allied Pacific Group, and Smart Foods had no shipments during the POR.

Based on SYEC's, Allied Pacific Group's and Smart Foods' certifications and our analysis of CBP information, we preliminarily determine that SYEC, Allied Pacific Group, and Smart Foods 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 NME cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to SYEC, Allied Pacific Group, and Smart Food and issue appropriate instructions to CBP based on the final results of the review.[10]

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist.

Exporter	Weighted average dumping margin (percent)
Zhanjiang Regal Integrated Marine Resources Co., Ltd	0.00
PRC-Wide Entity (which includes Hilltop International)[11]	112.81

Disclosure and Public Comment

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Interested parties, who wish to request a hearing, or to 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 Import Administration's IA ACCESS. An electronically filed document must be received successfully in its entirety by Import Administration's IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[12] 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, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the

[2] *See* Hilltop's October 3, 2012, submission, Re: Further Information Requests for Hilltop International in the Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Case No. A–570–893.

[3] *See* Preliminary Decision Memorandum, at 6.

[4] Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

[5] *See* Letter from Allied Pacific Group, No Shipment Certificate, dated April 18, 2012.

[6] Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

[7] *See* Letter from Shanton Yuexing regarding Request for Rescinding an Administrative Review dated March 28, 2012.

[8] *See* Letter from Smart Foods, dated April 6, 2012.

[9] *See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 65453, 65454 (October 25, 2010); *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review*, 74 FR 3559, 3560 (January 21, 2009); and *Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review*, 73 FR 9292, 9293 (February 20, 2008).

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) and the "Assessment Rates" section, below.

[11] The Department preliminarily determines that 70 PRC exporters have not demonstrated their eligibility for separate rate status. *See* Appendix 1 and Preliminary Decision Memorandum, at 6.

[12] *See* 19 CFR 351.310(c).

date, time, and location of the hearing. Interested parties are invited to comment on the preliminary results of this review.

Because, as noted below, the Department may verify the information upon which we will rely in making our final determination, the Department will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Interested parties may file rebuttal briefs, limited to issues raised in the case briefs.[13] The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication of the final results of this review. For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews*,[14] *i.e.*, on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons. Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[15] Where an importer- (or customer-) specific *ad valorem* is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16]

The Department recently announced a refinement to its assessment practice in NME antidumping duty 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 PRC-wide rate. Additionally, pursuant to this recently announced refinement, 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 will be liquidated at the PRC-wide rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; 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 deposit requirements, when imposed, shall remain in effect until further notice.

Post-Preliminary Results

As further explained in the Preliminary Decision Memorandum, Regal has requested a company-specific revocation pursuant to 19 CFR 351.222.[18] The Department is currently analyzing Regal's request and intends to issue post-preliminary results regarding Regal's revocation request. Additionally, on May 11, 2012, Zhanjiang Newpro Foods Co., Ltd. ("Newpro") submitted a timely separate rate application.[19] When the Department originally reviewed the separate rate application it inadvertently overlooked information regarding the entry documentation. Upon a recent further examination of the separate rate application, the Department discovered a discrepancy that required the Department to request further information from Newpro to determine the appropriateness of granting Newpro a separate rate.[20] Until the Department has fully analyzed the recently requested information the Department is unable to make a determination regarding whether it is appropriate to grant Newpro a separate rate. Due to the close proximity to the preliminary results, we are unable to take Newpro's response into consideration for the preliminary results. Newpro's response will be taken into consideration for the post-preliminary results. Because the Department cannot determine Newpro's eligibility for a separate rate for these preliminary results, pending the post-preliminary results, Newpro will remain part of the PRC-wide entity, its status before the filing of this separate rate application in this review.

Notification to Importers

This notice also 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.

This determination is being issued and published in accordance with

[13] *See* 19 CFR 351.309(d).

[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

[15] *See* 19 CFR 351.212(b)(1).

[16] *See* 19 CFR 351.106(c)(2).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

[18] *See* Regal's Request for Administrative Review and Revocation, dated February 28, 2012, at 2–3. *See also* Regal's 4th Supplemental Questionnaire Response, dated December 7, 2012, at 1.

[19] *See* Newpro's Separate Rate Application filed May 11, 2012 ("Newpro SRA").

[20] *See* letter from Catherine Bertrand, to Zhanjiang Newpro Foods Co., Ltd. ("Newpro"), Re: Certain Warmwater Shrimp from the People's Republic of China ("PRC"), dated February 13, 2013.

sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix 1

Aside From Hilltop, the companies that are not eligible for a separate rate and are part of the PRC-wide entity include:

1. Aqua Foods (Qingdao) Co., Ltd.
2. Asian Seafoods (Zhaojiang) Co., Ltd.
3. Beihai Evergreen Aquatic Product Science And Technology Co Ltd
4. Dalian Hualian Foods Co., Ltd.
5. Dalian Shanhai Seafood Co., Ltd.
6. Dalian Taiyang Aquatic Products Co., Ltd.
7. Dalian Z&H Seafood Co., Ltd.
8. Fujian Chaohui International Trading
9. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
10. Fujian Rongjiang Import and Export Corp.
11. Fuqing Minhua Trade Co., Ltd
12. Fuqing Yihua Aquatic Food Co., Ltd.
13. Fuqing Yiyuan Trading Co., Ltd.
14. Guangdong Jiahuang Foods Co., Ltd.
15. Guangdong Jinhang Foods Co., Ltd.
16. Guangdong Shunxin Sea Fishery Co. Ltd.
17. Guangdong Wanya Foods Fty. Co., Ltd.
18. Hai Li Aquatic Co., Ltd.
19. Hainan Brich Aquatic Products Co., Ltd.
20. Hainan Hailisheng Food Co., Ltd.
21. Hainan Xiangtai Fishery Co., Ltd.
22. Haizhou Aquatic Products Co., Ltd.
23. Hua Yang (Dalian) International Transportation Service Co.
24. Kingston Foods Corporation
25. Maoming Xinzhou Seafood Co., Ltd.
26. Ocean Duke Corporation
27. Olanya (Germany) Ltd.
28. Qingdao Yuanqiang Foods Co., Ltd.
29. Rizhao Xinghe Foodstuff Co., Ltd.
30. Rui'an Huasheng Aquatic Products Processing Factory
31. Savvy Seafood Inc.
32. Sea Trade International Inc.
33. Shandong Meijia Group Co., Ltd.
34. Shanghai Linghai Fisheries Trading Co. Ltd.
35. Shanghai Lingpu Aquatic Products Co.
36. Shanghai Smiling Food Co., Ltd.
37. Shanghai Zhoulian Foods Co., Ltd.
38. Shantou Jiazhou Foods Industry
39. Shantou Jin Cheng Food Co., Ltd.
40. Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
41. Shantou Ruiyuan Industry Company Ltd.
42. Shantou Wanya Foods Fty. Co., Ltd.
43. Shenzen Allied Aquatic Produce Development Ltd.
44. Shenzhen Yudayuan Trade Ltd.
45. Thai Royal Frozen Food Zhanjiang Co., Ltd.
46. Xiamen Granda Import & Export Co., Ltd.
47. Yancheng Hi-king Agriculture Developing Co., Ltd.
48. Yanfeng Aquatic Product Foodstuff
49. Yangjiang Anyang Food Co., Ltd.
50. Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd.
51. Yangjiang Wanshida Seafood Co., Ltd.
52. Yelin Enterprise Co., Ltd.
53. Zhangzhou Xinwanya Aquatic Product
54. Zhangzhou Yanfeng Aquatic Product
55. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
56. Zhanjiang Fuchang Aquatic Products Co., Ltd.
57. Zhanjiang Go Harvest Aquatic Products Co., Ltd.
58. Zhanjiang Haizhou Aquatic Product Co. Ltd.
59. Zhanjiang Hengrun Aquatic Co, Ltd.
60. Zhanjiang Jinguo Marine Foods Co., Ltd.
61. Zhanjiang Join Wealth Aquatic Products Co., Ltd.
62. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
63. Zhanjiang Newpro Foods Co., Ltd.
64. Zhanjiang Rainbow Aquatic Development
65. Zhanjiang Universal Seafood Corp.
66. Zhejiang Daishan Baofa Aquatic Products Co., Ltd.
67. Zhejiang Xinwang Foodstuffs Ltd.
68. Zhejiang Zhoufu Food Co., Ltd.
69. Zhoushan Corporation
70. Zhoushan Haiwang Seafood Co., Ltd.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Background.
2. Respondent Selection.
3. Questionnaires.
4. Scope of the Order.
5. Separate Rates.
6. PRC-Wide Entity.
7. Use of Facts Available and AFA.
8. Application of Total AFA to the PRC-Wide Entity.
9. Selection of AFA Rate.
10. Corroboration of Secondary Information.
11. Rate for Non-Selected Companies.
12. Preliminary Determination of No Shipments.
13. Non-Market Economy Country.
14. Surrogate Country and Surrogate Value Data.
15. Surrogate Country.
16. Economic Comparability.
17. Significant Producers of Comparable Merchandise.
18. Data Availability.
19. Date of Sale.
20. Targeted Dumping.
21. Results of Targeted Dumping Analysis.
22. Fair Value Comparisons.
23. Export Price.
24. Normal Value.
25. Factor Valuations.
26. Currency Conversion.
27. Regal Revocation Request.

[FR Doc. 2013–05667 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam'') for the period of review (''POR'') February 1, 2011, through January 31, 2012. The Department has preliminarily determined that sales by the Minh Phu Group,[1] and Nha Trang Seafoods,[2] the two mandatory respondents, and Quoc Viet,[3] the voluntary respondent, have not been made below normal value (''NV''). Additionally, the Department has preliminarily determined not to revoke the order in part, with respect to Nha Trang Seafoods.[4]

DATES: *Effective Date:* March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, Irene Gorelik, and Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068, (202) 482–6905, and (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff

[1] Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd. (collectively, the ''Minh Phu Group'').

[2] Nha Trang Seaproduct Company and its affiliates, NT Seafoods Corporation, Khatrang Seafoods-F.89 Joint Stock Company, and NTSF Seafoods Joint Stock Company (collectively, the ''Nha Trang Seafoods'').

[3] Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. (''Quoc Viet'').

[4] *See* ''Decision Memorandum for Preliminary Results for the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results at 5.

Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10.[5] Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in *Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011), remains dispositive.

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"). Constructed export prices and export prices have been calculated in accordance with section 772 of the Act. Because Vietnam is a nonmarket economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c). Specifically, the mandatory and voluntary respondent's factors of production have been valued with prices from Indonesia, which is economically comparable to Vietnam and is a significant producer of comparable merchandise.

For a full description of the methodology underlying our conclusions, please see Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. 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 ("CRU"), 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.

Intent Not To Revoke Order in Part

We preliminarily determine[6] not to revoke in part the order with respect to Nha Trang Seafoods, under section 751 of the Act, because we preliminarily find that Nha Trang Seafoods has not satisfied the requirements of 19 CFR 351.222(b).[7]

Verification

As provided in sections 782(i)(3)(A)–(B) of the Act, we intend to verify the information upon which we will rely in determining our final results of review with respect to the Minh Phu Group.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Simple average margin (percent)
Minh Phu Group:[8]	0.00
Minh Phu Seafood Corp., aka	
Minh Phu Seafood Corporation, aka	
Minh Phu Seafood Plc, aka	
Minh Phu Hau Giang Seafood Co., Ltd., aka	
Minh Phat Seafood Co., Ltd., aka	
Minh Qui Seafood Co., Ltd., aka	
Minh Qui Seafood	
Nha Trang Seafoods:[9]	0.00
Nha Trang Seaproducts Company, aka	
Nha Trang Seafoods, aka	
NT Seafoods Corporation, aka	
NT Seafoods, aka	
Nha Trang Seafoods—F.89 Joint Stock Company, aka	
Nha Trang Seafoods—F.89, aka	
NTSF Seafoods Joint Stock Company, aka	
NTSF Seafoods	
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.[10]	0.00
Bac Lieu Fisheries Joint Stock Company, aka	0.00
Bac Lieu Fisheries Company Limited, aka	
Bac Lieu Fisheries Co., Ltd., aka	
Bac Lieu Fisheries Limited Company, aka	
Bac Lieu Fis	

[5] *See* Preliminary Decision Memorandum for a complete description of the scope of the order.

[6] *See* Preliminary Decision Memorandum.

[7] The Department recently modified the section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that modification does not apply to this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to the Department's regulations prior to the modification.

[8] In *AR6 VN Shrimp*, the Department found the companies comprising the Minh Phu Group are a single entity and, because there have been no changes to this determination since the sixth administrative review; we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review*, 77 FR 13547, 13549 (March 7, 2012), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012) ("*AR6 VN Shrimp*").

[9] In *AR5 VN Shrimp*, the Department found the companies comprising Nha Trang Seafoods are a single entity and, because there have been no changes to this determination since the fifth administrative review; we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review*, 76 FR 12054, 12056 (March 4, 2012), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) ("*AR5 VN Shrimp*").

[10] The Department selected Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. as a voluntary respondent in this review. *See* Preliminary Decision Memorandum, at 3.

Exporter	Simple average margin (percent)
BIM Seafood Joint Stock Company	0.00
Camau Frozen Seafood Processing Import Export Corporation, aka	0.00
Camimex, aka	
Camau Seafood Factory No. 4, aka	
Camau Seafood Factory No. 5, aka	
Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25), aka	
Frozen Factory No. 4	
C.P. Vietnam Corporation, aka	0.00
C.P. Vietnam Livestock Corporation, aka	
C.P. Vietnam Livestock Company Limited, aka	
C.P. Vietnam Livestock Co., Ltd., aka	
C.P. Vietnam	
Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka	0.00
Cai Doi Vam Seafood Import-Export Company, aka	
Caidoivam Seafood Company, aka	
Cadovimex-Vietnam, aka	
Cadovimex	
Cafatex Fishery Joint Stock Corporation, aka	0.00
Cafatex Corporation, aka	
Cafatex Corp., aka	
Cafatex, aka	
Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka	
Cafatex, aka	
Taydo Seafood Enterprise, aka	
Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho	
Can Tho Import Export Fishery Limited Company, aka	0.00
CAFISH	
Coastal Fisheries Development Corporation, aka	0.00
COFIDEC, aka	
Coastal Fisheries Development Corp., aka	
Coastal Fisheries Development Co. aka	
Coastal Fisheries Development	
Cuu Long Seaproducts Company, aka	0.00
Cuu Long Seaproducts Limited, aka	
Cuulong Seapro aka	
Cuu Long Seapro	
Danang Seaproducts Import Export Corporation, aka	0.00
Danang Sea Products Import Export Corporation, aka	
Danang Seaproduct Import-Export Corporation, aka	
Danang Seaproducts Import Export, aka	
Tho Quang Seafood Processing & Export Company, aka	
Tho Quang Seafood Processing and Export Company, aka	
Tho Quang, aka	
Tho Quang Co., aka	
Seaprodex Danang	
Viet I-Mei Frozen Foods Co., Ltd., aka	0.00
Grobest & I-Mei Industrial (Vietnam) Co., Ltd., aka	
Grobest & I-Mei Industry (Vietnam) Co., Ltd., aka	
Grobest	
Gallant Ocean (Vietnam) Co., Ltd., aka	0.00
Gallant Ocean (Quang Ngai) Co., Ltd.	
Investment Commerce Fisheries Corporation, aka	0.00
Investment Commerce Fisheries Corp., aka	
Investment Commerce Fisheries, aka	
Incomfish, aka	
Incomfish Corp., aka	
Incomfish Corporation	
Kim Anh Company Limited, aka	0.00
Kim Anh Co, Ltd.	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka	0.00
Minh Hai Jostoco, aka	
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka	
Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka	
Minh-Hai Export Frozen Seafood Processing Joint-Stock Company	
Minh Hai Joint-Stock Seafoods Processing Company, aka	0.00
Seaprodex Minh Hai, aka	
Sea Minh Hai, aka	
Seaprodex Min Hai, aka	
Seaprodex Minh Hai-Factory No. 78, aka	
Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.), aka	
Seaprodex Minh Hai (Workshop 1), aka	

Exporter	Simple average margin (percent)
Seaprodex Minh Hai Factory No. 69 Minh Hai Sea Products Import Export Company, aka	0.00
Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam aka Seaprimexco aka Minh Hai Seaproducts Co Ltd. Ngoc Sinh Private Enterprise, aka	0.00
Ngoc Sinh Private Enterprises, aka Ngoc Sinh Seafoods, aka Ngoc Sinh Seafoods Processing and Trading Enterprises, aka Ngoc Sinh Seafood Processing Company, aka Ngoc Sinh Seafoods (Private Enterprise), aka Ngoc Sinh Fisheries, aka Ngoc Sinh Ngoc Tri Seafood Joint Stock Company	0.00
Nhat Duc Co., Ltd., aka	0.00
Nhat Duc Nha Trang Fisheries Joint Stock Company, aka	0.00
Nha Trang Fisco aka Nhatrang Fisheries Joint Stock Company, aka Nhatrang Fisco, aka Nha Trang Fisheries, Joint Stock Phu Cuong Jostoco Seafood Corporation, aka	0.00
Phu Cuong Seafood Processing and Import-Export Co., Ltd., aka Phu Cuong Seafood Processing and Import Export Company Limited, aka Phu Cuong Jostoco Seafood Corp. Phuong Nam Foodstuff Corp. aka	0.00
Phuong Nam, aka Phuong Nam Co., Ltd., aka Western Seafood Processing and Exporting Factory, aka Western Seafood Sao Ta Foods Joint Stock Company, aka	0.00
Fimex VN aka Sao Ta Seafood Factory aka Saota Seafood Factory Seavina Joint Stock Company, aka	0.00
Seavina Soc Trang Seafood Joint Stock Company, aka	0.00
Stapimex, aka Soc Trang Aquatic Products and General Import Export Company, aka Stapimex Soc Trans Aquatic Products and General Import Export Company, aka Stapmex Thuan Phuoc Seafoods and Trading Corporation, aka	0.00
Thuan Phuoc Corp., aka Frozen Seafoods Factory No. 32, aka Seafoods and Foodstuff Factory, aka Seafoods and Foodstuff Factory Vietnam, aka My Son Seafoods Factory UTXI Aquatic Products Processing Corporation, aka	0.00
UT XI Aquatic Products Processing Corporation, aka UTXI Aquatic Products Processing Company, aka UT XI Aquatic Products Processing Company, aka UTXI Co. Ltd., aka UTXI, aka Hoang Phuong Seafood Factory, aka Hoang Phong Seafood Factory, aka UTXICO Viet Foods Co., Ltd., aka	0.00
Nam Hai Foodstuff and Export Company Ltd. Viet Hai Seafood Co., Ltd., aka	0.00
Vietnam Fish One Co., Ltd., aka Fish One Vietnam-wide Entity	25.76

Disclosure and Public Comment

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Interested parties, who wish to request a hearing, or to 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 in IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] 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, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing. Interested parties are invited to comment on the preliminary results of this review.

Because, as noted above, the Department intends to verify the information upon which we will rely in making our final determination with respect to the Minh Phu Group, the Department will establish the briefing schedule at a later time, and will notify parties of the schedule in accordance with 19 CFR 351.309. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries covered by this review.[13] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews*, *i.e.*, on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons. Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[14] Where an importer- (or customer-) specific *ad valorem* is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[15]

Additionally, pursuant to a recently announced refinement to its assessment practice in NME cases, if the Department continues to determine 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.[16]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Background
2. Respondent Selection
3. Scope of the Order
4. Request for Revocation, in Part
5. Preliminary Determination of No Shipments
6. Non-Market Economy Country
7. Separate Rates
8. Separate Rate Calculation
9. Vietnam-Wide Entity
10. Surrogate Country and Surrogate Value Data
11. Surrogate Country
12. Economic Comparability
13. Significant Producers of Comparable Merchandise
14. Data Availability
15. Date of Sale
16. Fair Value Comparisons
17. Targeted Dumping
18. Results of Targeted Dumping Analysis
19. U.S. Price
20. Factor Valuations
21. Currency Conversion

[FR Doc. 2013–05669 Filed 3–11–13; 8:45 am]

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[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.309(c) and (d).

[13] *See* 19 CFR 351.212(b).

[14] *See* 19 CFR 351.212(b)(1).

[15] *See* 19 CFR 351.106(c)(2).

[16] 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–533–820, A–560–812, A–570–865, A–583–835, A–549–817, A–823–811]

Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 5, 2012, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, the People's Republic of China (PRC), Taiwan, Thailand, and Ukraine. The Department finds that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the margins identified in the "Final Results of Sunset Reviews" section of this notice.

DATES: Effective March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2012, the Department initiated the second sunset reviews of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year ("Sunset") Review*, 77 FR 66439 (November 5, 2012). The Department received a notice of intent to participate from the following domestic interested parties: ArcelorMittal USA, LLC, Gallatin Steel, Nucor Corporation, SSAB Americas, Steel Dynamics, Inc., and United States Steel Corporation, within the deadline specified in 19 CFR 351.218(d)(1)(i). Each of these parties claimed interested party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product.

On December 5, 2012, the Department received adequate substantive responses from the domestic interested parties identified above within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no responses from respondent interested parties with respect to any of the antidumping duty orders covered by these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120-day) sunset reviews of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine.

Scope of the Orders

The products covered by the antidumping duty orders are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. The full scope language of each of the antidumping duty orders is listed in the Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated March 5, 2013 (Issues and Decision Memorandum), which is hereby adopted by this notice. The merchandise is currently classified under the item numbers of the Harmonized Tariff Schedule of the United States (HTSUS) listed in the scope of each order. Although the HTSUS item numbers are provided for convenience and customs purposes, the written descriptions of the scope of the antidumping duty orders remain dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the orders were revoked. Parties can find a complete discussion of these issues and the corresponding recommendations in this public document, which 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 (CRU) in Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of dumping at the following weighted-average percent margins:

Country	Manufacturer/producer/exporter	Weighted-average dumping margin (percent)
India	Ispat Industries Ltd	44.40
	Essar Steel Ltd	36.53
	All Others	38.72
Indonesia	Krakatau Steel Corporation	47.86
	All Others	47.86
PRC	Angang Group International Trade Co. Ltd., New Iron & Steel Co., Ltd., and Angang Group Hong Kong Co., Ltd.	31.09
	Shanghai Baosteel Group Corporation, Baoshan Iron & Steel Co., Ltd, and Baosteel Group International Trade Corporation.	12.34
	Benxi Iron & Steel Group International Economic & Trade Co., Ltd., Bengang Steel Plates Co., Ltd., and Benxi Iron & Steel Group Co., Ltd.	57.19
	Panzhihua Iron and Steel (Group) Co	65.59
	Wuhan Iron and Steel Group Corporation	65.59
	PRC-Wide Rate	90.83
Taiwan	An Feng Steel Co., Ltd	29.14

Country	Manufacturer/ Producer/ Exporter	Weighted-average dumping margin (percent)
	China Steel Corporation/Yieh Loong	29.14
	All Others	20.28
Thailand	Sahaviriya Steel Industries Public Co., Ltd	7.35
	Siam Strip Mill Public Co., Ltd	20.30
	All Others	4.41
Ukraine	All Others	90.33

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of these reviews in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 5, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–05647 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; American Fisheries Act (AFA): Permits

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

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 13, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

In response to the American Fisheries Act (AFA), NMFS developed a management program for Bering Sea and Aleutian Islands Management Area (BSAI) pollock to include a set of AFA permanent permits for AFA catcher/processors, AFA catcher vessels, AFA inshore processors, and AFA motherships. All vessels and processors participating in the non-Community Development Quota (CDQ) BSAI pollock fishery are required to have valid AFA permits on board the vessel or on site at the processing plant.

With the exceptions of the inshore vessel cooperatives, replacement vessel, and inshore vessel contract fishing applications, the AFA permit program had a one-time application deadline of December 1, 2000. All permitted participants in the AFA pollock fishery are already established and are issued with an indefinite expiration date.

This information collection was previously revised to include a new program, the Chinook Salmon Prohibited Species Catch Program (Chinook PSC Program). The Chinook PSC Program was established to promote reduction of Chinook salmon PSC in the Bering Sea pollock fishery to the extent practicable while achieving optimum yield in the pollock fishery. A PSC limit of Chinook salmon was established for the pollock industry participants in an industry-developed contractual arrangement, called an incentive plan agreement (IPA) that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. NMFS issues transferable Chinook salmon PSC allocations to eligible entities representing the catcher/processor sector, the mothership sector, inshore cooperatives, and Community Development Quota (CDQ) groups. Transferable allocations provide the pollock fleet the flexibility to maximize the harvest of pollock while maintaining Chinook salmon bycatch at or below the PSC limit.

It is also proposed that the title of this collection will be changed from American Fisheries Act: Vessel and Processor Permit Applications to American Fisheries Act (AFA): Permits.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include online data entry, email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0393.

Form Number: None.

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

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 61.

Estimated Time per Response: Application for Approval as an Entity Eligible to Receive Transferable Chinook Salmon PSC Allocations, 8 hours; Application for Transfer of Bering Sea Chinook Salmon PSC Allocation, 8 hours; Application for Incentive Plan Agreement (IPA) and List of IPA participants, 30 minutes; Application for AFA Permit for Replacement Vessel, 1 hour; Application for AFA Inshore Catcher Vessel Cooperative Permit, 2 hours; and Contract Fishing by Non-Member Vessels, 4 hours.

Estimated Total Annual Burden Hours: 181.

Estimated Total Annual Cost to Public: $124 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 6, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–05564 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC252

Endangered Species; File No. 17316

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that George Burgess, Ph.D., Florida Museum of Natural History, Dickinson Hall, University of Gainesville, Gainesville, FL 32611, has been issued a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

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

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 24, 2012, notice was published in the **Federal Register** (77 FR 58812) that a request for a scientific research permit to take smalltooth sawfish had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit holder is authorized to gather life history information on smalltooth sawfish populations of Florida, primarily in Florida Bay and the upper Keys area. The purpose of the research is to investigate the movements and habitat use of smalltooth sawfish in Florida waters. Annually, up to 80 sawfish may be captured by gillnet, longline, or angling gear, measured, passive integrated transponder, roto, dart, and external satellite tagged, tissue, muscle, and blood sampled, and released. Dead sawfish acquired through strandings or from law enforcement confiscations may be sampled for scientific purposes. The permit is authorized for a duration of 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 7, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–05617 Filed 3–11–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC538

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 31 Gulf of Mexico Red Snapper Assessment Workshop Webinar #6.

SUMMARY: The SEDAR 31 assessment of the Gulf of Mexico Red Snapper fishery will consist of a series of workshops and supplemental webinars. This notice is for a webinar in the Assessment Workshop portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 31 Assessment Workshop Webinar #6 will be held on April 4th, 2013. The workshop will begin at 1 p.m. and conclude no later than 5 p.m. EDT.

ADDRESSES:

Meeting address: The SEDAR 31 Assessment Workshop Webinar #6 will be held via GoToWebinar. The webinar is open to members of the public. Those interested in participating should contact Ryan Rindone at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request meeting information at least 24 hours in advance.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348–1630; email: *ryan.rindone@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process including a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment

and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the SEDAR 31 Assessment Workshop Webinar #6 are as follows:

Panelists will continue reviewing the progress of modeling efforts for Gulf of Mexico Red Snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 7, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–05606 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC548

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Mackerel and Ecosystem Scientific and Statistical Committees.

DATES: The meeting will convene at 8:30 a.m. on Wednesday, March 27, 2013 and conclude by 5 p.m. Thursday, March 28, 2013.

ADDRESSES: The meeting will be held at the Grand Hyatt Tampa Bay Hotel, 2900 Bayport Drive, Tampa, FL 33607; telephone: (813) 874–1234.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Standing and Special Mackerel SSC will meet jointly on Wednesday, March 27, 2013 to review benchmark stock assessments and recommend acceptable biological catch (ABC) for cobia and Spanish mackerel. On Thursday, March 28, 2013, the Standing and Ecosystem SSC meeting will meet jointly to receive a presentation on a multidisciplinary, multi-year Integrated Ecosystems Assessment (IEA) project being conducted by the Southeast Fisheries Science Center. The presentation will review (1) the Gulf of Mexico IEA Program in general, (2) the Gulf of Mexico Ecosystem Status Report, and (3) aspects of the ecosystem modeling effort. The Standing SSC will then meet on Thursday afternoon to discuss ABC Control Rule revisions and review the SEDAR assessment schedule and priorities.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org*.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 7, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–05586 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC545

Fisheries of the Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR): Public Meeting

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

ACTION: Notice of SEDAR 34 pre-workshop webinar for Highly Migratory Species (HMS) Atlantic sharpnose and bonnethead sharks.

SUMMARY: The SEDAR assessment of the HMS stocks of Atlantic sharpnose and bonnethead sharks will consist of one in-person workshop and a series of webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 34 pre-workshop Webinar will be held on Wednesday, April 30, 2013, from 10 a.m. until 12 p.m. central standard time (CST).

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

SEDAR Address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; telephone: (843) 571–4366; email: *julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and

Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop; and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the pre-workshop webinar are as follows:

Participants will present summary data and will discuss data needs and treatments.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 7, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013-05585 Filed 3-11-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC525

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 28 Gulf of Mexico Spanish mackerel and cobia Review Workshop.

SUMMARY: The SEDAR 28 assessment of the Gulf of Mexico Spanish mackerel and cobia fisheries will consist of a series of workshops and supplemental webinars. This notice is for the Review Workshop portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 28 Review Workshop will be held on March 25–26, 2013. The workshop will begin at 8 a.m. and conclude no later than 6 p.m. EDT on each day.

ADDRESSES: The Review Workshop will be held in the office of the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607. The Review Workshop is open to members of the public. Those interested in participating should contact Ryan Rindone at SEDAR (see Contact Information below) to request an invitation providing webinar access information. Please request meeting information at least 24 hours in advance.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; phone (813) 348-1630; email: *ryan.rindone@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process including a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Review Workshop are as follows:

Panelists will review the proceedings of the SEDAR 28 Data and Assessment Workshops, and make recommendations with respect to the stock assessments of Gulf of Mexico Spanish mackerel and cobia.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 7, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–05602 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC512

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in April, May, and June of 2013. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2013 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held April 11, May 9, and June 6, 2013.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on April 10, April 12, May 1, May 8, June 5, and June 12, 2013.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Wilmington, NC; Bohemia, NY; and Panama City, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Port St. Lucie, FL; Atlantic City, NJ; Ocean City, MD; Warwick, RI; Kitty Hawk, NC; and Gulfport, MS.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 83 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. April 11, 2013, 12 p.m.–4 p.m., Hampton Inn, 124 Old Eastwood Road, Wilmington, NC 28403.

2. May 9, 2013, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 10 Aero Road, Bohemia, NY 11716.

3. June 6, 2013, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 7115 Coastal Palms Boulevard, Panama City, FL 32408.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally,

new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 148 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. April 10, 2013, 9 a.m.–5 p.m., Holiday Inn, 10120 Northwest Federal Highway, Port St. Lucie, FL 34952.

2. April 12, 2013, 9 a.m.–5 p.m., Caesar's Palace, 2100 Pacific Avenue, Atlantic City, NJ 08401.

3. May 1, 2013, 9 a.m.–5 p.m., Princess Royale Oceanside, 9100 Coastal Highway, Ocean City, MD 21842.

4. May 8, 2013, 9 a.m.–5 p.m., Hilton Garden Inn, One Thurber Street/ Jefferson Boulevard, Warwick, RI 02886.

5. June 5, 2013, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.

6. June 12, 2013, 9 a.m.–5 p.m., Holiday Inn, 9515 Highway 49, Gulfport, MS 39503.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

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

Dated: March 7, 2013.

Kara Meckley,

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

[FR Doc. 2013–05639 Filed 3–11–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Third Party Testing of Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (Commission) is announcing that a collection of information entitled Third Party Testing of Children's Products has been approved by the Office of Management and budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The agency previously announced that a proposed information collection regarding third party testing of children's products had been submitted to OMB for review and clearance under 44 U.S.C. 3501–3520 in the **Federal Register** as follows:

- May 20, 2010, 75 FR 28336, at 28360–61 (proposed rule on Testing and Labeling Pertaining to Product Certification (testing rule));
- May 20, 2010, 75 FR 28208, at 28217–18 (proposed rule on Conditions and Requirements for Testing Component Parts of Consumer Products);
- November 8, 2011, 76 FR 69586, at 69592–93 (proposed amendment to the testing rule on selecting representative samples for periodic testing).

Final rules for each were published in the **Federal Register** on the following dates, respectively: November 8, 2011 (76 FR 69482, at 69537–40); November 8, 2011 (76 FR 69546, at 69578–80); and December 5, 2012 (77 FR 72205, at 72217–18).

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 3041–0159. The approval expires on February 29, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: March 7, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–05575 Filed 3–11–13; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Strong Sensitizer Guidance

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC or Commission) is announcing the availability of a document prepared by CPSC staff titled, "Strong Sensitizer

Guidance." This guidance document is intended to clarify the "strong sensitizer" definition, assist manufacturers in understanding how CPSC staff would assess whether a substance and/or product containing that substance should be considered a "strong sensitizer," and how the Commission would make such a determination. The staff guidance document is available on the Commission's Web site and from the Commission's Office of the Secretary.

ADDRESSES: The guidance document is available from the Commission's Web site at *http://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Regulated-Products-Rules/strongsensitizerguidance.pdf*. Copies may also be obtained from the Consumer Product Safety Commission, Office of the Secretary, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone 301–504–7923.

FOR FURTHER INFORMATION CONTACT: Joanna Matheson, Ph.D., Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2564; *jmatheson@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Commission is publishing a notice of proposed rulemaking for the purpose of revising the supplemental definition of "strong sensitizer" found at 16 CFR 1500.3(c)(5). The Commission is proposing to revise the supplemental definition of "strong sensitizer" due to advancements in the science of sensitization that have occurred since the current supplemental definition of "strong sensitizer" was promulgated in 1986. Toward this end, the Commission convened a panel of scientific experts from academia, industry, and the Federal Government who evaluated the current definition in light of scientific advances in the field of sensitization and made recommendations for proposed changes to the current definition, which eliminate redundancy, remove certain subjective factors, incorporate new and future technology for determining the sensitization characteristics of substances, rank the criteria for classification of strong sensitizers in order of importance (e.g., human over animal data), define criteria for "severity of reaction", and adopt a weight-of-the-evidence approach to determine the strength of the sensitizer.

Commission staff has prepared a document titled, "Strong Sensitizer Guidelines," which explains and clarifies each section of the proposed "strong sensitizer" supplemental definition by explaining the current scientific rationale underlying the methodologies and analysis that staff will consider when assessing whether a substance is a strong sensitizer. The CPSC expects that the guidance document will assist manufacturers and other stakeholders in understanding how CPSC staff and the Commission would assess whether a substance or product containing a substance should be considered a "strong sensitizer." The staff guidance document is available on the Commission's Web site and from the Commission's Office of the Secretary, both listed in the **ADDRESSES** section of this notice.

Dated: March 7, 2013.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–05578 Filed 3–11–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket No. 2012–0044–0001]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by April 11, 2013.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 242, Contract Administration and Audit Services, and related clauses in DFARS part 252; DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions; DFARS 247.207 and the related clause at 252.247–7028; OMB Control Number 0704–0250.

Type of Request: Extension.

Number of Respondents: 5,583.

Responses Per Respondent: 27.2.

Annual Responses: 152,014.

Average Burden per Response: 1.3 hours.

Annual Burden Hours: 202,103.

Needs and Uses: The Government requires this information in order to perform its contract administration functions. DoD uses the information as follows:

a. The information required by DFARS subpart 242.11 is used by contract administration offices to monitor contract progress, identify factors that may delay contract performance, and to ascertain potential contract delinquencies.

b. The information required by DFARS 252.242–7004 is used by contracting officers use to determine if contractor material management and accounting systems conform to established DoD standards.

c. The information required by DFARS 252.247–7028, and submitted on DD Form 1659, is used by contract administration offices and transportation officers to provide bills of lading to contractors. This requirement was previously addressed at DFARS 242.1404–2–70, and the related clause at DFARS 252.242–7003. Since the last renewal of this public information collection requirement, DFARS 242.14 has been realigned under DFARS part 247; therefore, when the associated OMB Clearance (No. 0704–0245) for DFARS part 247 is renewed in 2014, the information required by DFARS 252.247–7028 will be included in that renewal request and will not be included in any future renewal requests for DFARS part 242, Contract Administration and Audit Services.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

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

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after

submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–05613 Filed 3–11–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Financial Reporting EIA–28 Survey package to the Office of Management and Budget (OMB) for clearance under the provisions of the Paperwork Reduction Act of 1995. The Financial Reporting System, Form EIA–28 collects data used to analyze the energy industry's competitive environment as well as energy industry resource development, supply distribution, and profitability issues. This is a request to conduct a comprehensive voluntary evaluation of an existing data collection to inform a future redesign of the EIA–28. This future redesign will measure upstream oil and gas costs for exploration and production for U.S. companies' foreign and domestic operations. In order to successfully inform this redesign, EIA will assess the feasibility of collecting and measuring upstream oil and gas costs for exploration and production for U.S. energy companies' foreign and domestic operations. EIA will work to identify the policy goals and data needs of its stakeholders with respect to the collection and measurement of upstream oil and gas costs. The goal of this evaluation is to collect enough data to successfully inform the future redesign of the EIA–28.

DATES: Comments must be filed by April 11, 2013. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible. The Desk Officer may be telephoned at 202–395–4718 or contacted by email at *chad_s_whiteman@omb.eop.gov.*

ADDRESSES: Send comments to DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or email to *Chad_S_Whiteman@omb.eop.gov* is recommended. The OMB DOE Desk Officer may be telephoned at (202) 395–4718. A copy of your comments should also be provided to Neal Davis at the address below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Neal Davis. To ensure receipt of the comments by the due date, submission by FAX (202–586–4420) or email (*neal.davis@eia.gov*) is also recommended. The mailing address is EI–24, Forrestal Building, 1000 Independence Ave. SW., U.S. Department of Energy, Washington, DC 20585–0670. Mr. Davis may be contacted by telephone at (202) 586–6581.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) *OMB No.:* New; (2) *Information Collection Request Title:* Evaluation of the Financial Reporting System, Form EIA–28; (3) *Type of Request:* Comprehensive Evaluation of an Existing Data Collection; (4) *Purpose:* The Financial Reporting System, Form EIA–28 collects data used to analyze the energy industry's competitive environment as well as energy industry resource development, supply distribution, and profitability issues. However, this is not a request to collect data using Form EIA–28. It is a request to conduct a comprehensive voluntary evaluation of an existing data collection to inform a future redesign of the EIA–28. This future redesign will measure upstream oil and gas costs for exploration and production for U.S. companies' foreign and domestic operations. In order to successfully inform this redesign, EIA will assess the feasibility of collecting and measuring upstream oil and gas costs for exploration and production for U.S. energy companies' foreign and domestic operations. EIA will work to identify the policy goals and data needs of its stakeholders with respect to the collection and measurement of upstream oil and gas costs. The goal of this evaluation is to collect enough data to successfully inform the future redesign of the EIA–28. (5) *Annual Estimated Number of Respondents:* 300; (6) *Annual Estimated Number of Total Responses:* 300; (7) *Annual Estimated Number of Burden Hours:* 430; and (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* There is no cost associated with reporting and recordkeeping.

Statutory Authority: Public Law 93–275 (Federal Energy Administration Act of 1974), 5(a) and 13(a).

Issued in Washington, DC, on March 5, 2013.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2013–05632 Filed 3–11–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–83–000]

Arlington Storage Company, LLC; Notice of Application

Take notice that on February 26, 2013, Arlington Storage Company, LLC (Arlington), Two Brush Creek Boulevard, Kansas City, Missouri 64112, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to expand its Seneca Lake natural gas storage facility located in Schuyler County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The project, referred to as the "Gallery 2 Expansion Project," will involve converting two existing interconnected bedded salt caverns (collectively known as "Gallery 2"), previously used for propane storage, and related facilities to natural gas storage. The addition of

Gallery 2 will add an incremental 0.55 Bcf of working gas capacity to the Seneca Lake facility. Arlington further requests authorization to construct approximately 500 feet of field line and related facilities to connect the Gallery 2 wells to the existing Seneca Lake facilities; install a 500 horsepower compressor unit; construct and later remove temporary facilities to be used to debrine the caverns; install electric and instrument air lines; and plug and abandon two existing wells formerly used in the brine production and propane operation of the Gallery 2 Caverns. Arlington, also, seeks reaffirmation of its authority to charge market-based rates for its storage and hub services.

Any questions concerning this application may be directed to James F. Bowe, Jr., King & Spalding LLP, 1700 Pennsylvania Avenue NW., Suite 200, Washington, DC 20006, by telephone at (202) 626–9601, by facsimile at (202) 626–3737, or by email at *jbowe@kslaw.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on March 26, 2013.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05621 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–77–000.

Applicants: Michigan Electric Transmission Company.

Description: Application for Approval of Acquisition of Transmission Assets under FPA Sec. 203 of METC (McGulpin, Delhi, Spaulding).

Filed Date: 3/1/13.

Accession Number: 20130301–5382.

Comments Due: 5 p.m. ET 3/22/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–288–001.

Applicants: Entergy Arkansas, Inc.

Description: Transmission Service Monitor Compliance Filing to be effective 12/1/2012.

Filed Date: 3/1/13.

Accession Number: 20130301–5256.

Comments Due: 5 p.m. ET 3/22/13.

Docket Numbers: ER12–2292–003.

Applicants: Southwest Power Pool, Inc.

Description: Compliance Filing in ER12–2292 to be effective 3/19/2013.

Filed Date: 3/1/13.

Accession Number: 20130301–5352.

Comments Due: 5 p.m. ET 3/22/13.

Docket Numbers: ER13–1018–000.

Applicants: Brandon Shores LLC, C.P. Crane LLC.

Description: Brandon Shores LLC and C.P. Crane LLC submits Request for Waiver, Shortened Comment Period, and Expedited Consideration.

Filed Date: 3/1/13.

Accession Number: 20130301–5248.

Comments Due: 5 p.m. ET 3/15/13.

Docket Numbers: ER13–1019–000.

Applicants: South Carolina Electric & Gas Company.

Description: Central NITSA Cancellation to be effective 3/1/2013.

Filed Date: 3/1/13.

Accession Number: 20130301–5249.

Comments Due: 5 p.m. ET 3/22/13.

Docket Numbers: ER13–1020–000.

Applicants: NorthWestern Corporation.

Description: SA 254—NWE MATL TIA—1st Revised Agreement to be effective 3/1/2013.

Filed Date: 3/1/13.

Accession Number: 20130301–5318.

Comments Due: 5 p.m. ET 3/22/13.

Docket Numbers: ER13–1021–000.

Applicants: Mesquite Solar 1, LLC.

Description: Mesquite Solar 1 LLC Revised Joinder Agreement and Amendment to be effective 2/28/2013.
Filed Date: 3/1/13.
Accession Number: 20130301–5332.
Comments Due: 5 p.m. ET 3/22/13.
Docket Numbers: ER13–1022–000.
Applicants: Mesquite Power, LLC.
Description: Mesquite Power, LLC Revised Concurrence to Joinder Agreement and Amendment to be effective 2/28/2013.
Filed Date: 3/1/13.
Accession Number: 20130301–5335.
Comments Due: 5 p.m. ET 3/22/13.
Docket Numbers: ER13–1023–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to PJM's OATT Att DD 5.14 re NEPA Correction & Contingent Sell Offer to be effective 5/1/2013.
Filed Date: 3/1/13.
Accession Number: 20130301–5350.
Comments Due: 5 p.m. ET 3/22/13.
Docket Numbers: ER13–1025–000.
Applicants: Calpine Energy Services LP.
Description: Calpine Energy Services, L.P. submits Request for Limited Waiver.
Filed Date: 3/1/13.
Accession Number: 20130301–5394.
Comments Due: 5 p.m. ET 3/22/13.
Docket Numbers: ER13–1026–000.
Applicants: PPL Electric Utilities Corporation.
Description: Application of PPL Electric Utilities Corporation under section 205 for implementation of 100% CWIP for Northeast/Pocono Reliability Project.
Filed Date: 3/1/13.
Accession Number: 20130301–5396.
Comments Due: 5 p.m. ET 3/22/13.
Docket Numbers: ER13–1027–000.
Applicants: FirstEnergy Solutions Corp.
Description: Application of FirstEnergy Solutions Corp. for Authorization to Make Wholesale Power Sales to its Affiliate, The Potomac Edison Company.
Filed Date: 3/1/13.
Accession Number: 20130301–5400.
Comments Due: 5 p.m. ET 3/22/13.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–28–006.
Applicants: Avista Corporation.
Description: Avista Corporation's Informational Filing of Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A.
Filed Date: 3/1/13.
Accession Number: 20130301–5397.
Comments Due: 5 p.m. ET 3/22/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05629 Filed 3–11–13; 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: RP13–669–000.
Applicants: Perryville Gas Storage LLC.
Description: Perryville Gas Storage Tariff Filing 3/4/13 to be effective 5/1/2013.
Filed Date: 3/4/13.
Accession Number: 20130304–5062.
Comments Due: 5 p.m. ET 3/18/13.

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: RP09–427–007.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Southern Natural Gas Company, L.L.C. submits Compliance Filing to Petition to Amend Stipulation and Agreement.
Filed Date: 2/14/13.
Accession Number: 20130214–5189.
Comments Due: 5 p.m. ET 2/26/13.
Docket Numbers: RP12–955–004.
Applicants: CenterPoint Energy—Mississippi River T.
Description: Correction to Motion Rate Filing to be effective 3/1/2013.
Filed Date: 3/4/13.
Accession Number: 20130304–5094.
Comments Due: 5 p.m. ET 3/18/13.

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: March 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05627 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–50–000]

Welch Motel, Inc., Welch Oil, Inc., Boondocks USA Truck Stop, Bob Welch v. Midland Power Cooperative, Corn Belt Power Cooperative; Notice of Complaint

Take notice that on March 4, 2013, pursuant to section 210(h)(2)(A) 292.304 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Welch Motel, Inc., Welch Oil, Inc., Boondocks USA Truck Stop, and Bob Welch (collectively, Complainants) filed a complaint against Midland Power Cooperative (Midland) and Corn Belt Power Cooperative (collectively, Respondents) requesting that the Commission issue an order (1) Allowing the Complainants to enter into a contract to consume all of the electric energy and capacity generated by

Complainant's wind turbine located at 3065 220th Street, Williams, IA 50271–7518 before drawing power from Midland, (2) require Midland to install a mechanical meter without any blockers or detents to allow parallel operation, and (3) use this mechanical meter for registering and keeping track of the KWH consumed or generated for the billing month.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 25, 2013.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05623 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–1–000]

Excelerate Liquefaction Solutions I, LLC; Lavaca Bay Pipeline System, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Lavaca Bay LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Lavaca Bay LNG Project involving construction and operation of facilities by Excelerate Liquefaction Solutions I, LLC (ELS I) and Lavaca Bay Pipeline System, LLC (LBPS) (collectively referred to as ELS) in Calhoun and Jackson Counties, Texas. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. Please note that the scoping period will close on April 4, 2013.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows: FERC Public Scoping Meeting, Lavaca Bay LNG Project, March 21, 2013, 7:00 p.m. local time, Bauer Community Center, 2300 Texas 35, Port Lavaca, TX 77979, (361) 552–1234.

The project applicants will be available at the same location starting at 6:00 p.m. to answer questions.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Involvement of the U.S. Department of Energy

The FERC is the lead federal agency in preparing the EIS to satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Department of Energy (DOE), Office of Fossil Energy, has agreed to participate as a cooperating agency in the preparation of the EIS to satisfy its NEPA responsibilities.

Under section 3 of the Natural Gas Act of 1938, as amended (NGA), 15 U.S.C. 717b, DOE would authorize the export of natural gas, including liquefied natural gas (LNG), to countries with which the United States has not entered into a free trade agreement providing for national treatment for trade in natural gas, unless it finds that the proposed export will not be consistent with the public interest. For the Project, the purpose and need for DOE action is to respond to ELS I's application filed with DOE on October 5, 2012 (FE Docket No. 12–146–LNG), seeking authorization to export up to 10 million metric tons (equivalent to 1.33 billion standard cubic feet per day) of domestic natural gas as LNG for a 20-year period from the proposed ELS facilities in Calhoun County, Texas, commencing the earlier of the date of first export or seven years from the date that the requested authorization is issued. DOE authorization of ELS' application would allow the export of LNG to any country: (1) With which the United States does not have a free trade agreement requiring the national treatment for trade in natural gas; (2) that has, or in the future develops, the capacity to import LNG; and (3) with which trade is not prohibited by U.S. law or policy.

Summary of the Planned Project

ELS plans to develop, construct, and operate liquefied natural gas terminal facilities that include two purpose-built floating liquefaction, storage, and offloading units (FLSOs) and a 29-mile-long pipeline header system to transport natural gas from existing pipeline systems to the LNG terminal facilities. The Project would be constructed in two phases: Phase 1 would include a single FLSO with a storage capacity of about 250,000 cubic meters (m^3) of LNG and the capacity to produce up to four million tons per annum (MTPA), nominally of natural gas. Phase 2 would include facilities to support a second FLSO that would double the production to eight MTPA, nominally.

The Lavaca Bay LNG Project would consist of the following facilities:

Marine Facilities:

- Two double-hulled, permanently moored, FLSOs, each containing 10 LNG storage tanks, four 1 MTPA PRICO system trains for liquefaction, centrifugal refrigerant compressors, and associated infrastructure;
- Mooring structures and fenders to provide support for the FLSOs and LNG carriers;
- A new 2,218-foot-diameter turning basin dredged to a depth of 45.5 feet below the site datum, located adjacent to the existing Matagorda Ship Channel;
- Two berthing pockets, each 450 feet wide by 1,310 feet long, dredged to a depth of 60.5 feet below the site datum; and
- A 3,200-foot-long jetty with two reinforced concrete decked piers located adjacent to the turning basins.

In addition, ELS would deepen and widen the Matagorda Ship Channel to a depth of −44 feet mean low tide and a channel bottom width up to 300 feet.

Shoreside Facilities:

- A pig[1] launcher and receiver;
- Feed gas metering, compression, and pre-treatment;
- An inlet bulk separator;
- A condensate storage tank;
- A power generation system;
- A cooling water system and instrument air package;
- A cold vent/ground flare;
- A fire water system and water treatment plant; and
- Support buildings, including offices, control room, warehouse, and shop.

Pipeline Header System:

- A 29-mile-long, 42-inch-diameter natural gas pipeline extending northward from the shoreside facilities to nine natural gas interconnects southwest of Edna, Texas.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

The planned LNG terminal facilities (i.e., marine and shoreside facilities) would be constructed on about 85 acres of land. Of this amount, about 45 acres includes existing uplands and the remaining 40 acres would be created using dredge spoil from construction of the turning basin and two berthing pockets. Construction of the pipeline header system would require about 327 acres of land for construction and 164 acres for operation. The Project would also require approximately 150 additional acres for temporary use for construction laydown/staging areas and parking areas.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Cultural resources;
- Land use;
- Socioeconomics;
- Air quality and noise;
- Reliability and safety;
- Engineering and design material; and
- Cumulative environmental impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 7.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS[4]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, DOE has expressed its intention to participate as a cooperating agency in the preparation of the EIS to satisfy its NEPA responsibilities related to this project. Also, in accordance with the 2004 Interagency Agreement on the safety and security review of waterfront import/export LNG facilities, the U.S. Coast Guard and U.S. Department of Transportation participate as cooperating agencies.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's

[1] A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by ELS. This preliminary list of issues may change based on your comments and our analysis. Issued identified include:

- Potential impacts on recreational fishing and aquatic resources in the Matagorda Ship Channel;
- Potential impacts to fish and wildlife habitat, including potential impacts to federally and state-listed threatened and endangered species;
- Potential impacts and potential benefits of construction workforce on local housing, infrastructure, public services, and economy;
- Potential visual effects on surrounding areas; and
- Public safety and hazards associated with the liquefaction and transport of LNG.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 4, 2013. This is not your only public input opportunity; please refer to the Environmental Review Process flowchart in appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–1–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once ELS files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF13–1–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05620 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–44–006]

Iberdrola Renewables, Inc. PacifiCorp NextEra Energy Resources, LLC Invenergy Wind North America LLC Horizon Wind Energy LLC v. Bonneville Power Administration; Notice of Filing

Take notice that on March 1, 2013, pursuant to section 211A of the Federal Power Act,[1] the Bonneville Power Administration (Bonneville) submitted a request for approval of its revised Oversupply Management Protocol tariff amendment for filing, effective March 31, 2013 through September 30, 2015 and approval of the tariff filing as providing comparable transmission service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 22, 2013.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05622 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j–1 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–7–001]

United States Department of Energy, Bonneville Power Administration; Notice of Filing

Take notice that on March 1, 2013, the Bonneville Power Administration filed a proposed tariff amendment as a revision to the Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 26, 2013.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05625 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1035–000]

Palmco Power CA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Palmco Power CA, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is March 25, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–05628 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–51–000; QF11–204–001; QF11–205–001]

Interconnect Solar Development LLC; Notice of Petition for Enforcement

Take notice that on March 4, 2013, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h)(2006), Interconnect Solar Development LLC filed a Petition for Enforcement, requesting the Federal Energy Regulatory Commission (Commission) to initiate enforcement action against the Idaho Public Utilities Commission and Idaho Power; find that their actions violated PURPA; and to take any action deemed necessary to enforce the requirements of PURPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on March 25, 2013.

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05624 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference focused on natural gas and electric scheduling, and issues related to whether and how natural gas and electric industry schedules could be harmonized in order to achieve the most efficient scheduling systems for both industries. The technical conference will take place on April 25, 2013 beginning at 9:00 a.m. and ending at approximately 5:00 p.m. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. All interested persons are invited to attend the conference. Commission members may participate in the conference.

Following a series of regional technical conferences conducted in August 2012, the Commission issued an order directing further conferences and reports in the above captioned docket on November 15, 2012.[1] In the November 15 Order, the Commission noted that while its current regulations and policies provide flexibility in the near-term for utilities to address coordinated scheduling issues on a regional basis and for pipelines to provide enhanced scheduling opportunities, there are broader questions regarding whether industry-wide changes to scheduling practices and capacity release rules would be necessary or appropriate to achieve long-term gas-electric harmonization, address seams issues across regional markets, or promote a more efficient utilization of existing pipeline capacity. The Commission also noted the questions raised relating to whether new flexible pipeline services and additional nomination opportunities as developed by industry will result in more efficient utilization of pipeline capacity.

The conference will explore whether and how to achieve more efficient scheduling practices for the two industries. The conference will consider whether changes should be made to provide additional scheduling flexibility, including suggestions raised by stakeholders such as whether to increase the number of nomination opportunities, eliminate or change the interruptible "no-bump" rule, and/or provide enhanced ability for customers to schedule real-time gas transfers/sales or intraday capacity release transactions. The conference also will explore coordination of gas and electric scheduling, including: whether the establishment of a single "energy day" is desired and would be beneficial and how the scheduling leading up to that day could be efficiently sequenced; how to manage difficulties scheduling gas in the evenings and for weekends and holidays; whether it is preferable for electric scheduling to be done before or after gas and transportation scheduling; and whether technological advances permit a reduction in the time between the electric bid or pipeline nomination and when they are scheduled. Lastly, the conference also will explore whether these suggestions or any other options would allow for more efficient use of existing infrastructure by both gas generators and other customers.

Those interested in speaking at the technical conference should notify the Commission by March 15, 2013 by completing the online form at the following Web page: *https://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-speaker-form-04-25-13.asp*. Due to time constraints, we may not be able to accommodate all those interested in speaking. A supplemental notice also will be issued prior to the technical conference to provide

[1] *Coordination between Natural Gas and Electricity Markets*, 141 FERC ¶ 61,125, at P 11 (2012) (November 15 Order).

information about the agenda and organization of the technical conference. Those interested in attending the technical conference are encouraged, but not required, to register at the following Web page: *https://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form-04-25-13.asp.*

The technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with Internet access who wants to listen to the conference can do so by navigating to *www.ferc.gov's* Calendar of Events and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Notice is also hereby given that the discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period: ISO New England Inc., Docket No. ER13–895–000.

Information on the technical conference will also be posted on the Web site *http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp*, as well as the Calendar of Events on the Commission's Web site, *http://www.ferc.gov*, prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about the technical conference, please contact:

Elizabeth Topping (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6731, *Elizabeth.Topping@ferc.gov.*

Anna Fernandez (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6682, *Anna.Fernandez@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Dated: March 5, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–05626 Filed 3–11–13; 8:45 am]

BILLING CODE 6717–01–P

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site www.ferc.gov for three months after the conference.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9529–2]

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 1463.09; National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (Renewal); 40 CFR 300.430 and 300.435; was approved on 02/01/2013; OMB Number 2050–0096; expires on 02/29/2016; Approved without change. EPA ICR Number 1571.10; General Hazardous Waste Facility Standards (Renewal); 40 CFR 264.12, 264.13(a) and (c), 264.15(d), 264.16(d) and (e), 264.17(c), 264.37(b), 264.53, 264.54, 264.56(a), (d), (i), and (j), 264.73(a) and (b), 264.74, 264.96, 264.97(g), 264.101(b) and (c), 264.113(a), (b) and (d), 264.115, 264.116, 264.119(a) and (b), 264.120, 264.142(b) and (d), 264.143, 264.144(b), (c) and (d), 264.145, 264.147, 264.148, 264.151, 264.174, 264.193(i), 264.195, 264.226(a) and (b), 264.279, 264.303(a) and (b), 264.309, 264.347, 264.574, 265.12, 265.13(a), (b) and (c), 265.15(b) and (d), 265.16(d) and (e), 265.19(b) and (d), 265.51, 265.52, 265.53, 265.54, 265.56, 265.73(a) and (b), 265.74, 265.112, 265.113(a), (b) and (d), 265.115, 265.116, 265.118, 265.119, 265.120, 265.142, 265.143, 265.144, 265.145, 265.147, 265.148, 265.149, 265.150, 265.174, 265.193, 265.195, 265.197(c), 265.200, 265.225, 265.226, 265.260, 265.273, 265.279, 265.341, 265.347, 265.377, 265.403, 265.444, 265.445, 266.80(b), 268.4(a)(2), 270.30(i), (j), (k) and (l); was approved on 02/04/2013; OMB Number 2050–0120; expires on 02/29/2016; Approved without change.

EPA ICR Number 1128.10; NSPS for Secondary Lead Smelters; 40 CFR part 60 subparts A and L; was approved on 02/04/2013; OMB Number 2060–0080; expires on 02/29/2016; Approved without change.

EPA ICR Number 0976.16; 2013 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification (Revision); 40 CFR 262.12, 262.40, 262.41, 262.75, 263.11, 264.1, 264.11, 264.75, 265.1, 265.22, 265.75, 266.21, 266.23, 266.70, 266.80, 266.100, 266.108, 270.1, 270.11, 270.13, 270.30, 270.70, 270.72, 273.32, 273.60, 279.42, 279.62, and 279.73; was approved on 02/08/2013; OMB Number 2050–0024; expires on 12/31/2014; Approved without change.

EPA ICR Number 2357.04; Regulations.gov Exchange Information Collection; was approved on 02/08/2013; OMB Number 2025–0008; expires on 02/29/2016; Approved without change.

EPA ICR Number 0277.16; Application for New and Amended Pesticide Registration (Renewal); 40 CFR part 158; was approved on 02/14/2013; OMB Number 2070–0060; expires on 02/29/2016; Approved with change.

EPA ICR Number 1130.10; NSPS for Grain Elevators; 40 CFR part 60 subparts A and DD; was approved on 02/15/2013; OMB Number 2060–0082; expires on 02/29/2016; Approved with change.

EPA ICR Number 1093.10; NSPS for Surface Coating of Plastic Parts for Business Machines; 40 CFR part 60 subparts A and TTT; was approved on 02/25/2013; OMB Number 2060–0162; expires on 02/29/2016; Approved without change.

EPA ICR Number 2177.05; NSPS for Stationary Combustion Turbines; 40 CFR part 60 subparts A and KKKK; was approved on 02/25/2013; OMB Number 2060–0582; expires on 02/29/2016; Approved without change.

EPA ICR Number 1900.05; NSPS for Small Municipal Waste Combustors; 40

CFR part 60 subparts A and AAAA; was approved on 02/25/2013; OMB Number 2060–0423; expires on 02/29/2016; Approved without change.

EPA ICR Number 2078.05; EPA's ENERGY STAR Product Labeling (Renewal); was approved on 02/25/2013; OMB Number 2060–0528; expires on 02/29/2016; Approved with change.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2013–05599 Filed 3–11–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0659; FRL–9528–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Perchloroethylene Dry Cleaning Facilities (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 April 11, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0659, 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 October 17, 2012 (77 FR 63813), 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–2012–0659, 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: NESHAP for Perchloroethylene Dry Cleaning Facilities (Renewal).

ICR Numbers: EPA ICR Number 1415.10, OMB Control Number 2060–0234.

ICR Status: This ICR is scheduled to expire on March 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 NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart M.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 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: Owners or operators of perchloroethylene dry cleaning facilities.

Estimated Number of Respondents: 28,012.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,564,851.

Estimated Total Annual Cost: $157,229,928, which includes $156,283,515 in labor costs, $582,500 in capital/startup costs, and $363,913 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in burden costs from the most- recently approved ICR for both the respondents and the Agency, and is due to an increase in labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate respondent burden costs. This ICR also uses updated labor rates from OPM to calculate EPA burden costs.

There is an increase in respondent labor hours due to revisions in the

calculation of burden hours. The previous ICR included technical and managerial labor hours only in its burden calculations. To be consistent with the estimation methodology used in other ICRs, we have revised the calculations to include clerical labor burden, and have assumed it to be equal to 10 percent of technical labor hours. These revisions resulted in an increase in the respondent labor burden and associated cost.

There is an increase in the total O&M costs for industry respondents. This increase is due to a mathematical error identified in the previous ICR and is not due to changes in the individual O&M costs or the number of corresponding respondents.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–05600 Filed 3–11–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting cancellation and reschedule.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) meeting that was scheduled for March 6, 2013 is rescheduled for March 14, 2013 from 1:00–5:00 p.m. EDT due to a snowstorm predicted for the Mid-Atlantic region on March 6, 2013. The agenda for the meeting remains the same; Working Groups on Next Generation Alerting, E9–1–1 Location Accuracy, Network Security Best Practices, DNSSEC Implementation Practices for ISPs, Secure BGP Deployment, Botnet Remediation, Alerting Issues Associated with CAP Migration, 9–1–1 Prioritization, and Consensus Cybersecurity Controls will be presenting final reports for a vote by the Council.

DATES: The meeting that was scheduled for March 6, 2013 is rescheduled for March 14, 2013.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting on March 6, 2013, is cancelled due to weather and rescheduled for March 14, 2013, in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The start time for the rescheduled meeting will be posted on the CSRIC Web site at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii.*

The CSRIC is a federal advisory committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2011, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2013. Working Groups are described in more detail at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii.*

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2013–05670 Filed 3–8–13; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 13–275]

Pleading Cycle Established for Comment on Applications for State Certification for the Provision of Telecommunications Relay Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks public comment on state applications for renewal of the certification of their state TRS programs pursuant to Title IV of the Americans with Disabilities Act (ADA).

DATES: Comments are due on or before March 15, 2013, and reply comments are on or before March 29, 2013.

ADDRESSES: You may submit comments, identified by CG Docket No. 03–123 and the relevant state identification number of the state application that is being comment upon, by any of the following methods: Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://apps.fcc.gov/ecfs//* or by filing paper copies. Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number.

- 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 (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.
- 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. All hand

deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial Mail sent by 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 should be addressed to 445 12th St. SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2247, or email *Dana.Wilson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 13–275. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the Dates section. The full text of document DA 13–275, copies of applications for certification, and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. Document DA 13–275 also is available on the Commission's Web site at: *http://transition.fcc.gov/cgb/dro/trs.html*. Document DA 13–275, copies of applications for certification, and subsequently filed documents in this matter may also be found by searching ECFS at *http://apps.fcc.gov/ecfs//*. When searching for the state application in ECFS, please enter docket number 03–123 in the proceeding number fill-in block, and the state identification number, (e.g., TRS–46–12) assigned for that specific state application in the bureau identification number fill-in block. They may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th St. SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their state telecommunications relay service (TRS) programs pursuant to Title IV of the ADA, 47 U.S.C. 225, and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2013. A state's applications for certification, covering the five year period from July 26, 2013 to July 25, 2018, must demonstrate that the state TRS program complies with section 225 and the Commission's rules governing the provision of TRS. This notice seeks public comment on the following state applications for certification:

File No: TRS–46–12
Alabama Public Service Commission, State of Alabama
File No: TRS–47–12
Arkansas Deaf and Hearing Impaired, State of Arkansas
File No: TRS–02–12
Commission for the Deaf and Hard of Hearing, State of Arizona
File No: TRS–32–12
California Public Utilities Commission, State of California
File No: TRS–23–12
Colorado Public Utilities Commission, State of Colorado
File No: TRS–48–12
Connecticut Department of Public Utility, State of Connecticut
File No: TRS–35–12
Delaware Public Service Commission, State of Delaware
File No: TRS–49–12
Public Service Commission, District of Columbia
File No: TRS–50–12
Florida Public Service Commission, State of Florida
File No: TRS–51–12
Georgia Public Service Commission, State of Georgia
File No: TRS–22–12
Hawaii Public Utilities Commission, State of Hawaii
File No: TRS–43–12
Idaho Public Service Commission, State of Idaho
File No: TRS–10–12
Illinois Commerce Commission, State of Illinois
File No: TRS–08–12
Indiana Telephone Relay Access Corporation, State of Indiana
File No: TRS–03–12
Iowa Utilities Board, State of Iowa
File No: TRS–07–12
Kansas Relay Services, Inc., State of Kansas
File No: TRS–52–12
Kentucky Public Service Commission, Commonwealth of Kentucky
File No: TRS–13–12
Louisiana Relay Administration Board, State of Louisiana
File No: TRS–53–12
Maine Public Utilities Commission, State of Maine
File No: TRS–33–12
Telecommunications Access of Maryland, State of Maryland
File No: TRS–34–12
Department of Telecommunications and Energy, Commonwealth of Massachusetts
File No: TRS–54–12
Michigan Public Service Commission, State of Michigan
File No: TRS–39–12
Minnesota Department of Commerce, State of Minnesota
File No: TRS–55–12
Mississippi Public Service Commission, State of Mississippi
File No: TRS–15–12
Missouri Public Service Commission, State of Missouri
File No: TRS–56–12
Telecommunications Access Program, State of Montana
File No: TRS–40–12
Nebraska Public Service Commission, State of Nebraska
File No: TRS–25–12
Relay Nevada, State of Nevada
File No: TRS–42–12
New Hampshire Public Service Commission, State of New Hampshire
File No: TRS–45–12
New Jersey Board of Utilities, State of New Jersey
File No: TRS–14–12
Commission for the Deaf and Hard of Hearing, State of New Mexico
File No: TRS–16–12
New York State Department of Public Service, State of New York
File No: TRS–30–12
Department of Health and Human Service, State of North Carolina
File No: TRS–12–12
Information Technology Department, State of North Dakota
File No: TRS–37–12
Public Utilities Commission of Ohio, State of Ohio
File No: TRS–57–12
Oklahoma Telephone Association, State of Oklahoma
File No: TRS–36–12
Oregon Public Utilities Commission, State of Oregon
File No: TRS–58–12
Pennsylvania Bureau of Consumer Services, Commonwealth of Pennsylvania
File No: TRS–28–12
Telecommunications Regulatory Board, Puerto Rico
File No: TRS–59–12
Division of Public Utilities and Carriers, State of Rhode Island
File No: TRS–62–12

Micronesian Telecommunications Corporation, Saipan
File No: TRS–11–12
South Carolina Office of Regulatory Staff, State of South Carolina
File No: TRS–60–12
Department of Human Services, State of South Dakota
File No: TRS–20–12
Tennessee Regulatory Authority, State of Tennessee
File No: TRS–17–12
Texas Public Utility Commission, State of Texas
File No: TRS–09–12
Public Service Commission, State of Utah
File No: TRS–44–12
Vermont Department of Public Service, State of Vermont
File No: TRS–04–12
Department for the Deaf and Hard of Hearing, Commonwealth of Virginia
File No: TRS–27–12
Office of the Deaf and Hard of Hearing, State of Washington
File No: TRS–01–12
Wisconsin Department of Administration, State of Wisconsin
File No: TRS–18–12
Division of Vocational Rehabilitation, State of Wyoming

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2013–05649 Filed 3–11–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (FTC or Commission) plans to conduct an online survey of parents and (with parental permission) their children from the ages of 8–16 years old who watch movies, listen to music, and/or play game applications (apps) on smartphones, Internet-accessible handheld devices, or tablet computers (collectively app-capable mobile devices) that run either the Apple's iOS or Google's Android operating system. This is the second of two notices required under the Paperwork Reduction Act (PRA), and the Commission seeks additional public comments and requests Office of Management and Budget (OMB) review of, and clearance for, the proposed collection of information.

DATES: Comments must be received by April 11, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Keith Fentonmiller, (202) 326–2775, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Online survey of parents and children about movies, music, and games on app-capable mobile devices.

OMB Information Collection Request Reference Number: 201302–3084–002.

Type of Information Request: New collection.

Type of Review: Regular.

Abstract: Although children (like consumers generally) increasingly are purchasing or playing movies, music, and games on app-capable mobile devices, no commercially available data quantify children's consumption of mobile content that is rated or labeled as potentially inappropriate for them; assess whether and to what extent the various content rating systems impact their ability to purchase or play such content; or measure the content restrictions imposed by parents, including through technology-based parental control mechanisms. Accordingly, the Commission proposes to conduct a survey of parents and (with parental permission) their children from the ages of 8–16 years old who use the most common app-capable mobile devices—those that run either Apple's iOS or Google's Android platform. The staff anticipates conducting a voluntary online survey of 900 adult respondents and 900 children drawn from a nationally representative pool. The Commission expects that the survey results will help inform its policy recommendations on the marketing of violent entertainment to children.

On September 24, 2012, the Commission sought comment on the information collection requirements for the proposed consumer research. 77 FR 58834. No comments were received. Staff, however, did have a telephone discussion about the proposed survey with representatives from the Entertainment Software Rating Board (ESRB). The ESRB expressed concern that the Commission was planning to survey only children, in contrast to prior surveys, which asked questions of both children and their parents. After further consideration, the Commission has decided to expand the online survey to include the parents of children who watch movies, listen to music, and/or play game apps on mobile devices. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

This online survey will build upon the body of consumer research that the Commission has conducted in the media violence area since 2000, which includes seven undercover shops by children of music, movie, and video game retailers and movie theaters; two telephone surveys of parents and children about their awareness and use of the entertainment rating and labeling systems; [1] a mall intercept study of parents on the adequacy of rating disclosures on movie DVD cases; and a telephone survey of parents on the marketing of unrated DVDs.[2] Although a survey of only children about their consumption of violent entertainment on mobile devices would be informative, past research has been especially instructive when the Commission has been able to compare the responses of parents and their children about parental involvement in the selection and purchase of violent movies, music, and games; the extent to which parents restrict their children's access to violent content; and awareness and use of the rating and labeling systems for such content. This research has uncovered significant differences between what parents think they are doing to regulate their children's consumption of violent content and their children's reported experiences. These areas of parent-child disconnection have informed the Commission's recommendations for the entertainment industry and guided its consumer education efforts. For these same reasons, the Commission now intends to survey parents about their children's access to violent content on

[1] *See* FTC, *Marketing Violent Entertainment To Children: A Review Of Self-Regulation And Industry Practices In The Motion Picture, Music Recording & Electronic Game Industries*, Appendix F, at 5 (Sep. 2000), available at *http://www.ftc.gov/reports/violence/Appen%20F.pdf*; FTC, *Marketing Violent Entertainment to Children: A Fifth Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*, at 25 (Apr. 2007), available at *http://www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf*.

[2] *See* FTC, *Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*, at 10 & 16 (Dec. 2009), available at *http://ftc.gov/os/2009/12/P994511violententertainment.pdf*.

mobile devices, awareness and use of content labeling and rating systems, and awareness and use of parental controls for mobile content. Similar questions will be posed to the adult respondents' children.

Likely Respondents: With the assistance of a consumer research firm (hereafter the Contractor), the FTC will develop a draft questionnaire for use in a nationally representative online survey of parents and (with parental permission) their children ages 8–16 years who watch movies, listen to music, and/or play game apps on a mobile device that runs either the Apple iOS or Android operating system. To the extent feasible, the adult panel shall consist of 100 adult respondents for each of the nine child age groups between ages 8 and 16, inclusive (900 total adult respondents). The child survey shall be conducted as an adjunct to the parents' survey, *i.e.*, by surveying each child about whom the adult respondents answered their survey questions (900 total child respondents).

Estimated Annual Hours Burden: Approximately 417 hours (117 hours for the adult screener + 300 hours for the parent and child surveys).

- *Screening Questions:* The screening questions will be asked of approximately 7,000 adult respondents to provide a large enough random sample for the surveys. Cumulatively, screening should require a maximum of 117 hours (7,000 total respondents × 1 minute for each). Because the adult respondents will be pre-screening the 900 child respondents, the Commission does not anticipate any burden on children related to screening.
- *Survey Questions:* Answering the surveys will impose a burden per adult respondent of approximately 10 minutes, totaling 150 hours for all respondents to the surveys (900 respondents × 10 minutes per survey). Similarly, answering the surveys will impose a burden per child respondent of approximately 10 minutes, totaling 150 hours for all respondents to the surveys (900 respondents × 10 minutes per survey).

Estimated annual cost burden: $0. The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 11, 2013. Write "Entertainment Industry Study; FTC File No. P994511" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information * * * which is privileged or confidential." *See* Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/mobileappssurveypra2*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write "Entertainment Industry Study; FTC File No. P994511" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 11, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2013–05630 Filed 3–11–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–19060–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary(OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the

public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before May 13, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–19060–60D for reference.

Information Collection Request Title: Living Healthier, Living Longer Program Evaluation.

Abstract: The Department of Health and Human Services (HHS), the Office of Women's Health, (OWH) Coordinating Committee on Lesbian, Gay, Bi-sexual and Transgender (LGBT) Issues has prioritized the collection of health data on LGBT populations. In response, OWH funded an initiative to "identify and test effective and innovative ways of reducing obesity in lesbian and bisexual women" (HHS, 2012). This initiative will include nutritional and physical activity counseling and activities, and will be implemented in New York City. It will be tailored to bisexual and lesbian women forty years and over. Evaluation of the initiative will address the following questions: (1) Does a healthy weight intervention based on the individual and the social environment improve health and reduce weight of older lesbian and bisexual women; and, (2) If the intervention does improve health and/or reduce weight, what attributes of the intervention contributed to this success? Information will be gathered and analyzed in an effort to identify and understand the effects of this healthy weight intervention and to inform the applicability of the intervention to other sites across the United States. The project is scheduled for one year.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline Survey	40	1	15/60	10
Study Completion Survey	40	1	15/60	10
Pedometer Profile	40	1	2/60	1
Health Screen (physical measurement)	40	3	10/60	20
Health History Questionnaire	40	1	12/60	8
Intervention Experience Study Mid-Point)	40	1	1	40 hours
Intervention Experience (Study Completion)	40	1	1	40 hours
Total				129 hours

OS specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–05609 Filed 3–11–13; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held by teleconference on April 17, 2013, from 1:30 p.m. to 5 p.m.

Location: Rockwall II Building, 5515 Security Lane, Conference Room 1033, Rockville, MD 20852. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room.

Contact Person: Gail Dapolito (301–827–1289) or Rosanna Harvey (301–827–1297), Food and Drug Administration, 1401 Rockville Pike (HFM–71), Rockville, MD 20852, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On April 17, 2013, the committee will meet by teleconference. In open session, the committee will hear updates of research programs in the Laboratory of Chemistry, Division of Therapeutic Proteins, Office of Biotechnology Products, Center for Drug Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is

available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: On April 17, 2013, from 1:30 p.m. to from approximately 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 10, 2013. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 2, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 3, 2013.

Closed Committee Deliberations: On April 17, 2013, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–05582 Filed 3–11–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Computational Biophysics.

Date: April 4, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05682 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Loan Repayment Program Review.

Date: April 30, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: JoAnn McConnell, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–5324, *McConnej@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 7, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05687 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ODCS Small Business.

Date: March 13–14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05685 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 28, 2013 from 01:00 p.m. to—04:30 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on February 27, 2013, 78 FR 13358.

This meeting is being rescheduled due to pending deadlines. The meeting will be held one day earlier, March 27th from 1:00 p.m.–4:30 p.m. The meeting is closed to the public.

Dated: March 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05688 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; HIV/AIDS Research Education & Training (R25/T32).

Date: April 5, 2013.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities , National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 2013

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05679 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 28, 2013, 08:00 a.m. to March 28, 2013, 06:00 p.m., Hotel Palomar, 2121 P Street NW., Washington, DC, 20037 which was published in the **Federal Register** on February 27, 2013, 78 FR 13358.

This meeting is being rescheduled due to pending deadlines. The meeting will be held one day earlier, March 27th 8 a.m.–6 p.m., at the Hotel Palomar. The meeting is closed to the public.

Dated: March 5, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05680 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DILIN Applications.

Date: April 19, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D. G. PATEL, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard,

Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 7, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05681 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

Date: March 27, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular and Cellular Substrates of Complex Brain Disorders.

Date: March 29, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Deborah L Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics of Disease.

Date: March 29, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *panniersr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Malaria Application.

Date: March 29, 2013.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05685 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Hematology and Vascular Pathobiology.

Date: April 1–2, 2013.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: AIDS and AIDS Related Research.

Date: April 1, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 5, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05684 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Muscle and Rehabilitation.

Date: April 1–3, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncology 1—Basic Translational IRG (OBT).

Date: April 2–3, 2013.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Angela Y Ng, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS Innovative Research Applications.

Date: April 2–3, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

Date: April 2, 2013.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: April 3, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM 12–019: Road Map with Statistical, Computational, and Systems Approaches.

Date: April 3, 2013.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology and Viral Pathogenesis.

Date: April 3, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: April 3, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maqsood A Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR12–251: Behavioral Science Track Award for Rapid Transition (B/START) (R03).

Date: April 3, 2013.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tuberculosis.

Date: April 4–5, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Clinical and Translational Studies.

Date: April 4, 2013.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delvin Knight, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 4128, Bethesda, MD 20892–7814, 301.435.1850, *knightdr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cognition and Child Psychopathology.

Date: April 5, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–05683 Filed 3–11–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0009]

Privacy Act of 1974; Computer Matching Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

Overview Information: Privacy Act of 1974: Computer Matching Program between the Department of Homeland Security, U.S. Citizenship and Immigration Services and the New York Department of Labor.

SUMMARY: This document provides notice of the existence of a computer matching program between the Department of Homeland Security, U.S. Citizenship and Immigration Services and the New York Department of Labor.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security/U.S. Citizenship and Immigration Services provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, 65 FR 77677 (December 12, 2000).

Participating Agencies: The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) is the source agency and the New York Department of Labor (NY–DOL) is the recipient agency.

Purpose of the Match: This Computer Matching Agreement allows DHS/USCIS to provide the NY–DOL with electronic access to immigration status information contained within the DHS/USCIS Verification Information System (VIS). The immigration status information will enable NY–DOL to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by NY–DOL.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires DHS to establish a system for the verification of immigration status of alien applicants for, or recipients of, certain types of benefits and to make this system available to state agencies that administer such benefits. Section 121(c) of IRCA amends Section 1137 of the Social Security Act and certain other sections of law that pertain to Federal entitlement benefit programs to require state agencies administering these programs to use the DHS/USCIS verification system to make eligibility determinations in order to prevent the issuance of benefits to alien applicants who are not entitled to program benefits because of their immigration status. The VIS database is the DHS/USCIS system established and made available to NY–DOL and other covered agencies for use in making these eligibility determinations.

NY–DOL seeks access to the information contained in the DHS/USCIS VIS database, for the purpose of confirming the immigration status of alien applicants for, or recipients of, the benefits it administers, in order to discharge its obligation to conduct such verifications pursuant to Section 1137 of the Social Security Act, 42 U.S.C. 1320b-7 and to New York Unemployment Insurance Law, Article 18, Title 7, Section 590.

Categories of Records and Individuals Covered: DHS/USCIS will provide the following to NY–DOL: Records in the DHS/USCIS VIS database containing information related to the status of aliens and other persons on whom DHS/USCIS has a record as an applicant, petitioner, or beneficiary. See DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 76 FR 58525 (September 21, 2011).

NY–DOL will provide the following to DHS/USCIS: NY–DOL records pertaining to alien applicants for, or recipients of entitlement benefit programs administered by the State.

NY–DOL will match the following records with DHS/USCIS records:

- Alien Registration Number
- I–94 Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Nationality
- Social Security Number

DHS/USCIS will match the following records with NY–DOL records:

- Alien Registration Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Country of Birth (not nationality)
- Social Security Number (if available)
- Date of Entry
- Immigration Status Data
- Employment Eligibility Data

Inclusive Dates of the Matching Program: The inclusive dates of the matching program are from December 29, 2011, and continuing for 18 months through June 28, 2013. The matching program may be extended for an additional 12 months thereafter, if certain conditions are met.

Address for Receipt of Public Comments or Inquires: Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between DHS–USCIS and NY–DOL, may contact.

For general questions please contact: Janice M. Jackson (202–443–0109), Acting Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Washington, DC 20529.

For privacy questions please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Dated: February 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05640 Filed 3–11–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0011]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Homeland Security/U.S. Citizenship and Immigration Services.

ACTION: Notice.

Overview Information: Privacy Act of 1974; Computer Matching Program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the Texas Workforce Commission.

SUMMARY: This document provides notice of the existence of a computer matching program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the Texas Workforce Commission.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security/U.S. Citizenship and Immigration Services provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy

Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, 65 FR 77677 (December 12, 2000).

Participating Agencies: The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) is the source agency and the Texas Workforce Commission (TWC) is the recipient agency.

Purpose of the Match: This Computer Matching Agreement allows DHS/USCIS to provide TWC with electronic access to immigration status information contained within the DHS–USCIS Verification Information System (VIS). The immigration status information will enable TWC to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by TWC.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires DHS to establish a system for the verification of immigration status of alien applicants for, or recipients of, certain types of benefits and to make this system available to state agencies that administer such benefits. Section 121(c) of IRCA amends Section 1137 of the Social Security Act and certain other sections of law that pertain to Federal entitlement benefit programs to require state agencies administering these programs to use the DHS–USCIS verification system to make eligibility determinations in order to prevent the issuance of benefits to alien applicants who are not entitled to program benefits because of their immigration status. The VIS database is the DHS–USCIS system established and made available to TWC and other covered agencies for use in making these eligibility determinations.

TWC seeks access to the information contained in DHS–USCIS VIS database for the purpose of confirming the immigration status of alien applicants for, or recipients of, the benefits it administers, in order to discharge its obligation to conduct such verifications pursuant to Section 1137 of the Social Security Act, 42 U.S.C. 1320b–7 and to Texas Labor Code Section 207.043.

Categories of Records and Individuals Covered: DHS/USCIS will provide the following to TWC: Records in the DHS/USCIS VIS database containing information related to the status of aliens and other persons on whom DHS/USCIS has a record as an applicant, petitioner, or beneficiary. See DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 76 FR 58525 (September 21, 2011).

TWC will provide the following to DHS–USCIS: TWC records pertaining to alien applicants for, or recipients of entitlement benefit programs administered by the State.

TWC will match the following records with DHS/USCIS records:

- Alien Registration Number
- I–94 Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Nationality
- Social Security Number

DHS/USCIS will match the following records with TWC records:

- Alien Registration Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Country of Birth (not nationality)
- Social Security Number (if available)
- Date of Entry
- Immigration Status Data
- Employment Eligibility Data

Inclusive Dates of the Matching Program: The inclusive dates of the matching program are from December 8, 2011, and continuing for 18 months through June 7, 2013. The matching program may be extended for an additional 12 months thereafter, if certain conditions are met.

Address for Receipt of Public Comments or Inquires: Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between DHS–USCIS and TWC.

For general questions please contact:

Janice Jackson (202–443–0109), Acting Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Washington, DC 20529.

For privacy questions please contact:

Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Dated: February 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05642 Filed 3–11–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0007]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Homeland Security/U.S. Citizenship and Immigration Services.

ACTION: Notice.

Overview Information: Privacy Act of 1974; Computer Matching Program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the California Department of Health Care Services.

SUMMARY: This document provides notice of the existence of a computer matching program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the California Department of Health Care Services.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security/U.S. Citizenship and Immigration Services provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, 65 FR 77677 (December 12, 2000).

Participating Agencies: The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) is the source agency and the California Department of Health Care Services (CA–DHCS) is the recipient agency.

Purpose of the Match: This Computer Matching Agreement allows DHS/USCIS to provide CA–DHCS with electronic access to immigration status information contained within the DHS/USCIS Verification Information System (VIS). The immigration status information will enable CA–DHCS to determine whether an applicant is eligible for benefits under Medicaid Programs administered by CA–DHCS.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility

and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires DHS to establish a system for the verification of immigration status of alien applicants for, or recipients of, certain types of benefits and to make this system available to state agencies that administer such benefits. Section 121(c) of IRCA amends Section 1137 of the Social Security Act and certain other sections of law that pertain to Federal entitlement benefit programs to require state agencies administering these programs to use the DHS/USCIS verification system to make eligibility determinations in order to prevent the issuance of benefits to alien applicants who are not entitled to program benefits because of their immigration status. The VIS database is the DHS/USCIS system established and made available to CA–DHCS and other covered agencies for use in making these eligibility determinations.

CA–DHCS seeks access to the information contained in the DHS/USCIS VIS database for the purpose of confirming the immigration status of alien applicants for, or recipients of, the benefits it administers, in order to discharge its obligation to conduct such verifications pursuant to Section 1137 of the Social Security Act, 42 U.S.C. 1320b–7, and California Welfare and Institutions Code §§ 1104.1, 14007.5, and 14011.2.

Categories of Records and Individuals Covered: DHS/USCIS will provide the following to CA–DHCS: Records in the DHS/USCIS VIS database containing information related to the status of aliens and other persons on whom DHS/USCIS has a record as an applicant, petitioner, or beneficiary. See DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 76 FR 58525 (September 21, 2011).

CA–DHCS will provide the following to DHS/USCIS: CA–DHCS records pertaining to alien applicants for, or recipients of, entitlement benefit programs administered by the State.

CA–DHCS will match the following records with DHS/USCIS records:

- Alien Registration Number
- I–94 Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Nationality
- Social Security Number

DHS/USCIS will match the following records with CA–DHCS records:

- Alien Registration Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Country of Birth (not nationality)
- Social Security Number (if available)
- Date of Entry
- Immigration Status Data
- Employment Eligibility Data

Inclusive Dates of the Matching Program: The inclusive dates of the matching program are from December 8, 2011, and continuing for 18 months through June 7, 2013. The matching program may be extended for an additional 12 months thereafter, if certain conditions are met.

Address for Receipt of Public Comments or Inquires: Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the Computer Matching Agreement between DHS–USCIS and CA–DHCS, may contact:

For general questions please contact:

Janice M. Jackson (202–443–0109), Acting Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Washington, DC 20529.

For privacy questions please contact:

Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Dated: February 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05645 Filed 3–11–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0008]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Homeland Security/U.S. Citizenship and Immigration Services.

ACTION: Notice.

Overview Information: Privacy Act of 1974; Computer Matching Program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the New Jersey Department of Labor and Workforce Development.

SUMMARY: This document provides notice of the existence of a computer matching program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the New Jersey Department of Labor and Workforce Development.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security/U.S. Citizenship and Immigration Services provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, 65 FR 77677 (December 12, 2000).

Participating Agencies: The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) is the source agency and the New Jersey Department of Labor and Workforce Development (NJ–LWD) is the recipient agency.

Purpose of the Match: This Computer Matching Agreement allows DHS/USCIS to provide NJ–LWD with electronic access to immigration status information contained within the DHS/USCIS Verification Information System (VIS). The immigration status information will enable NJ–LWD to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by NJ–LWD.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires DHS to establish a system for the verification of immigration status of alien applicants for, or recipients of, certain types of benefits and to make this system available to state agencies that administer such benefits. Section 121(c) of IRCA amends Section 1137 of the Social Security Act and certain other sections of law that pertain to Federal entitlement benefit programs to require state agencies administering these programs to use the DHS/USCIS verification system to make eligibility determinations in order to prevent the issuance of benefits to alien applicants who are not entitled to program benefits because of their immigration status. The VIS database is the DHS/USCIS system established and made available to NJ–LWD and other covered agencies for use

in making these eligibility determinations.

NJ–LWD seeks access to the information contained in the DHS/USCIS VIS database for the purpose of confirming the immigration status of alien applicants for, or recipients of, the benefits it administers, in order to discharge its obligation to conduct such verifications pursuant to Section 1137 of the Social Security Act, 42 U.S.C. 1320b–7, and to New Jersey Statute 43:2.

Categories of Records and Individuals Covered: DHS/USCIS will provide the following to NJ–LWD: Records in the DHS/USCIS VIS database containing information related to the status of aliens and other persons on whom DHS/USCIS has a record as an applicant, petitioner, or beneficiary. See DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 76 FR 58525 (September 21, 2011).

NJ–LWD will provide the following to DHS/USCIS: NJ–LWD records pertaining to alien applicants for, or recipients of, entitlement benefit programs administered by the State.

NJ–LWD will match the following records with DHS/USCIS records:

- Alien Registration Number
- I–94 Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Nationality
- Social Security Number

DHS/USCIS will match the following records with NJ–LWD records:

- Alien Registration Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Country of Birth (not nationality)
- Social Security Number (if available)
- Date of Entry
- Immigration Status Data
- Employment Eligibility Data

Inclusive Dates of the Matching Program: The inclusive dates of the matching program are from December 29, 2011, and continuing for 18 months through June 28, 2013. The matching program may be extended for an additional 12 months thereafter, if certain conditions are met.

Address for Receipt of Public Comments or Inquires: Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the Computer Matching Agreement between DHS–USCIS and NJ–LWD, may contact:

For general questions please contact: Janice Jackson (202–443–0109), Acting Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Washington, DC 20529.

For privacy questions please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Dated: February 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05638 Filed 3–11–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0010]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Homeland Security/U.S. Citizenship and Immigration Services.

ACTION: Notice.

Overview Information: Privacy Act of 1974; Computer Matching Program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the Massachusetts Division of Unemployment Assistance.

SUMMARY: This document provides notice of the existence of a computer matching program between the Department of Homeland Security/U.S. Citizenship and Immigration Services and the Massachusetts Division of Unemployment Assistance.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security/U.S. Citizenship and Immigration Services provides this notice in accordance with The Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, 65 FR 77677 (December 12, 2000).

Participating Agencies: The Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) is the source agency and the Massachusetts Division of Unemployment Assistance (MA–DUA) is the recipient agency.

Purpose of the Match: This Computer Matching agreement allows DHS/USCIS to provide MA–DUA with electronic access to immigration status information contained within the DHS/USCIS Verification Information System (VIS). The immigration status information will enable MA–DUA to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by MA–DUA.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), requires DHS to establish a system for the verification of immigration status of alien applicants for, or recipients of, certain types of benefits and to make this system available to state agencies that administer such benefits. Section 121(c) of IRCA amends Section 1137 of the Social Security Act and certain other sections of law that pertain to Federal entitlement benefit programs to require state agencies administering these programs to use the DHS/USCIS verification system to make eligibility determinations in order to prevent the issuance of benefits to alien applicants who are not entitled to program benefits because of their immigration status. The VIS database is the DHS/USCIS system established and made available to MA–DUA and other covered agencies for use in making these eligibility determinations.

MA–DUA seeks access to the information contained in DHS/USCIS VIS database for the purpose of confirming the immigration status of alien applicants for, or recipients of, the benefits it administers, in order to discharge its obligation to conduct such verifications pursuant to Section 1137 of the Social Security Act, 42 U.S.C. 1320b–7, and to Mass. Gen. Laws ch. 151A, § 25(h).

Categories of Records and Individuals Covered: DHS/USCIS will provide the following to MA–DUA: Records in the DHS/USCIS VIS database containing information related to the status of aliens and other persons on whom DHS/USCIS has a record as an applicant, petitioner, or beneficiary. See DHS/USCIS–004 Systematic Alien Verification for Entitlements Program System of Records Notice, 76 FR 58525 (September 21, 2011).

MA–DUA will provide the following to DHS/USCIS: MA–DUA records pertaining to alien applicants for, or recipients of entitlement benefit programs administered by the State.

MA–DUA will match the following records with DHS–USCIS records:

- Alien Registration Number
- I–94 Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Nationality
- Social Security Number

DHS–USCIS will match the following records with MA–DUA records:

- Alien Registration Number
- Last Name
- First Name
- Middle Name
- Date of Birth
- Country of Birth (not nationality)
- Social Security Number (if available)
- Date of Entry
- Immigration Status Data
- Employment Eligibility Data

Inclusive Dates of the Matching Program: The inclusive dates of the matching program are from December 14, 2011, and continuing for 18 months through to June 13, 2013. The matching program may be extended for an additional 12 months thereafter, if certain conditions are met.

Address for Receipt of Public Comments or Inquires: Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the computer matching agreement between DHS–USCIS and MA–DUA, may contact:

For general questions please contact:

Janice Jackson (202–443–0109), Acting Privacy Branch Chief, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Washington, DC 20529.

For privacy questions please contact:

Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Dated: February 13, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–05641 Filed 3–11–13; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0007; OMB No. 1660–0076]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Hazard Mitigation Grant Program application and reporting requirements.

DATES: Comments must be submitted on or before May 13, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0007. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Chief, Grants Policy Branch, Mitigation Division, (202) 646–3321. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov*.

SUPPLEMENTARY INFORMATION: Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, established the Hazard Mitigation Grant Program. Grant requirements and grants management procedures of the program are outlined in 44 C.F.R. Part 13 and 206 Subpart N. Grantees administer the HMGP, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. Grantees are defined as any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or an Indian tribal government that chooses to act as a grantee.

Collection of Information

Title: Hazard Mitigation Grant Program Application and Reporting.

Type of Information Collection: Extension, without change, of a currently approved information collection.

FEMA Form(s): None.

Abstract: Grantees administer the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities in order to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to collect information for determining whether to provide financial assistance in the form of grant awards and monitors grantee project activities and expenditure of funds through grantee quarterly reporting.

Affected Public: State, local, or Tribal Government.

Number of Respondents: 56.

Number of Responses: 3,024.

Estimated Total Annual Burden Hours: 24,696.

Estimated Cost: There is no annual operation or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: March 1, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–05675 Filed 3–11–13; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4101–DR; Docket ID FEMA–2013–0001]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4101–DR), dated February 13, 2013, and related determinations.

DATES: *Effective Date:* March 4, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 13, 2013.

Greene and Perry Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05631 Filed 3–11–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N060; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by April 11, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–052582).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–052582) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes you to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Documents and other information the applicant has submitted are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–79842A

Applicant: Jeremy White, University of Nebraska, Omaha, Nebraska.

The applicant requests a permit to take (harass by survey) Indiana bat (*Myotis sodalis*) in conjunction with surveys and population monitoring activities in Nebraska for the purpose of enhancing the species' survival.

Permit Application Number: TE–052582

Applicant: TRC Environmental Corporation, 605 Skyline Dr., Laramie, Wyoming 82070.

The applicant requests a permit to take (harass by survey) black-footed ferret (*Mustela nigripes*), Southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*) and quino checkerspot (*Euphydrias editha quino*) in conjunction with population monitoring activities in Texas, Oklahoma, Nevada,

Arizona, Colorado, New Mexico, South Dakota, Utah, Wyoming, and California for the purpose of enhancing the species' survival.

Permit Application Number: TE–219757

Applicant: Mike Phillips, Turner Endangered Species Fund, 1123 Research Dr., Bozeman, Montana 59718.

The applicant requests renewal of an existing permit and an amendment to take black-footed ferret (*Mustela nigripes*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit Application Number: TE–98300A

Applicant: George Boxall, Annis Opes Institute, LLC, 4755 Elk Run Dr., Albany, Oregon, 97321.

The applicant requests a permit to take (capture, handle, release) pallid sturgeon (*Scaphirhynchus albus*), white sturgeon (*Acipenser transmontanus*), bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus Lucius*), humpback chub (*Gila cypha*), and razorback sucker (*Xyrauchen texanus*) in conjunction with surveys and population monitoring activities in Montana and Colorado for the purpose of enhancing the species' survival.

Permit Application Number: TE–057401

Applicant: BLM Grand Staircase Escalante National Monument, 669 S. Highway 89A, Kanab, Utah 84741.

The applicant requests renewal of a permit to take Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing survival and recovery of the species.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: March 5, 2013.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–05607 Filed 3–11–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N030; 40120–1112–0000–F2]

Incidental Take Permit Amendment and Supplemental Environmental Assessment for Wind Energy Development, Guayanilla, Puerto Rico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the Endangered Species Act (Act), we, the U.S. Fish and Wildlife Service, announce the receipt and availability of a revised habitat conservation plan (revised HCP) and accompanying documents for wind energy development by San Francisco Wind Farm LLC (formerly WindMar R.E.) (Permittee). The revised HCP analyzes take of Puerto Rican crested toad (*Peltophryne lemur*) incidental to the previously authorized wind energy development activities in Guayanilla, Puerto Rico, so that this listed species might be added to those already covered by the existing incidental take permit (ITP). We invite public comments on these documents.

DATES: We must receive any written comments at our Regional Office (see **ADDRESSES**) on or before April 11, 2013.

ADDRESSES: Documents are available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; or at the Caribbean Ecological Services Field Office, Fish and Wildlife Service, Road 301, Km. 5.1, Boquerón, PR 00622.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator (see **ADDRESSES**), telephone: 404–679–7313; or Mr. José Cruz-Burgos, Endangered Species Coordinator, at the Caribbean Field Office (see **ADDRESSES**), telephone: 787–851–7297 extension 218.

SUPPLEMENTARY INFORMATION: We announce the availability of the revised HCP and supplemental environmental assessment (Supplemental EA), which analyzes the take of the threatened Puerto Rican crested toad. The Service previously advertised (71 FR 951), and issued in September 2006, TE104073 as a 40-year ITP authorizing incidental take of Puerto Rican nightjar (*Caprimulgus noctitherus*), brown pelican (*Pelecanus occidentalis occidentalis*), and roseate tern (*Sterna dougallii dougallii*).

The Permittee requests an amendment for the remaining term of the ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 et seq.), as amended. The Permittee's revised HCP describes the mitigation and minimization measures proposed to address the impacts to the Puerto Rican crested toad within the Punta Ventana section of the covered area.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the supplemental EA pursuant to National Environmental Policy Act (NEPA) regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the revised HCP per 50 CFR parts 13 and 17.

The supplemental EA assesses the likely environmental impacts associated with the implementation of the activities and proposed amendments, including the environmental consequences of the no-action alternative and the proposed action. The proposed action alternative is amendment of the ITP and implementation of the revised HCP as submitted by the Permittee. The revised HCP evaluates potential take of the Puerto Rican crested toad and presents conservation measures needed to add incidental take authority for this species to previously authorized incidental take associated with wind energy development.

Avoidance, minimization and mitigation measures include, but are not limited to: monitor Puerto Rican crested toad breeding events in order to adapt work plans and timing of covered activities while implementing measures to avoid and minimize take of dispersing toads and toadlets; install

fencing to keep Puerto Rican crested toads outside of certain areas of the project; and mitigation measures such as trapping and removing non-native, invasive predators, competitors, and invasive vegetation, as well as conduct research and implement measures to enhance breeding habitat.

Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE104073 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**.

Covered Area

The ITP covers a 290-ha (725-acre) wind generation facility including up to 25 turbines in Guayanilla, Puerto Rico. Puerto Rican crested toads have been observed in the Punta Ventana portion of the project. The Permittee proposes installation and operation of eight wind turbines in Punta Ventana over 79 ha (195 acres) that would affect about 5.1 ha (12.6 acres) of dry forest habitat. The revised HCP includes the site plan for the project and detailed information on the areas within Punta Ventana that would be affected by the construction and operation turbine sites, connecting roads, staging areas and connection to a substation.

Next Steps

We will evaluate the ITP amendment application, including the revised HCP and any comments we receive, to determine whether the amendment application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether amendment of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to amend the ITP. If we determine that the requirements are met, we will amend the ITP to include the Puerto Rican crested toad as a covered species for incidental take.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: February 15, 2013.

Kenneth A. Garraban,

Acting Regional Director.

[FR Doc. 2013–05594 Filed 3–11–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of the gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2710(d)(3)(B), the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until August 19, 2013.

Dated: February 27, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–05596 Filed 3–11–13; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–EFMO–10830; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Availability of Final General Management Plan/Environmental Impact Statement for Effigy Mounds National Monument, Iowa

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Effigy Mounds National Monument (EFMO), Iowa.

DATES: The Final GMP/EIS will remain available for public review for 30 days following the publishing of the Notice of Availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Copies of the Final GMP/EIS are available to the public by request by writing to the Superintendent, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146. The document is available on the internet at the NPS Planning, Environment, and Public Comment Web site at *http://www.parkplanning.nps.gov/indu.efmo*.

FOR FURTHER INFORMATION CONTACT: Superintendent Jim Nepstad, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa, at (563) 873–3491.

SUPPLEMENTARY INFORMATION: We, the NPS, have developed this GMP/EIS to guide the management of EFMO for the next 25 years. The Draft GMP/EIS considered three draft conceptual alternatives—a no-action and two action alternatives, including the NPS preferred alternative. The Draft GMP/EIS assessed impacts to cultural resources (archeological, landscapes, ethnographic resources, and museum collections), to natural resources (soils, wild and scenic rivers, vegetation, fish and wildlife, special status species, and visual resources/viewsheds), to visitor use and experience, to the socioeconomic environment, and to EFMO operations and facilities.

The preferred alternative in both the Draft GMP/EIS and Final GMP/EIS focuses on providing an enhanced visitor experience with increased understanding of EFMO while protecting and preserving natural and cultural resources. The desired visitor experience would be to make personal connections to EFMO's tangible resources through understanding of the

significance of the (pre-European contact) American Indian moundbuilding story and its relationship to the heritage of the region. The landscape and visitor facilities would support a contemplative atmosphere with opportunities for the public to spend time reflecting on the lives and legacy of the moundbuilders and the sacred nature of the site today. The natural setting created by preserving or restoring landscapes would provide a connection between the moundbuilding cultures and the environment that shaped their lives and beliefs.

New construction of facilities and trails at EFMO would be minimal under the preferred alternative. Using the direction provided in this plan, specific locations of trails in the Heritage Addition would be identified in a subsequent trail development plan. This plan envisions a small visitor contact station at the Sny Magill unit within an expanded boundary area. Once this land is acquired, subsequent site development planning would determine location and design of the station as well as of redesigned trails for Sny Magill.

Dated: July 18, 2012.

Michael T. Reynolds,

Regional Director, Midwest Region.

This document was received by the Office of the Federal Register on March 7, 2013.

[FR Doc. 2013–05610 Filed 3–11–13; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0030]

Agency Information Collection Activities; Proposed Renewal of Previously Approved Collection; Comments Requested: Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 13, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW., Suite 10200, Attn: Deana Willis, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Renewal of a Currently Approved Collection.

(2) *The title of the form/collection:* Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The application form is submitted voluntarily, once a year by law students and recent law school graduates (e.g., judicial law clerks) who will be in this applicant pool only once;

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5000 respondents will complete the application in approximately 1 hour per application, plus an estimated 600 respondents (candidates selected for interviews) who will complete a travel survey used to schedule interviews and prepare official Travel Authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR 301–1.3), as needed, in approximately 10 minutes per form, plus an estimated 400 respondents who will complete a Reimbursement Form (if applicable) in order for the Department to prepare the Travel Vouchers required to reimbursed candidates for authorized costs they incurred during pre-employment interview travel at approximately 10 minutes per form.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated revised total annual public burden associated with this application is 5167 hours.

If additional information is required, please contact Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: March 7, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–05608 Filed 3–11–13; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Third Modification to Consent Decree Under the Clean Air Act

On February 22, 2013, the Department of Justice lodged a proposed third modification to a consent decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. 99–1182 (EAS) and 99–1250 (EAS).

Under a 2007 consent decree, American Electric Power Service Corp., et al. ("AEP") agreed to substantially reduce sulfur dioxide (SO_2) and nitrogen oxides (NO_X) from the AEP Eastern System which was then comprised of sixteen coal-fired power plants. The original consent decree requires AEP to install flue gas desulfurization (FGD) technology on Rockport Unit 1 by December 31, 2017 and on Rockport Unit 2 by December 31, 2019.

Under the third modification that was lodged on February 22, 2013, in exchange for providing AEP an extension of time for the installation of FGD technology on Units 1 and 2 at the Rockport Plant, AEP agrees to the following: (1) To install interim emission controls that will begin to reduce SO_2 emissions from the Rockport Plant earlier than required under the original Consent Decree; (2) to accept a declining annual tonnage limitation for SO_2 for the Rockport Plant; (3) to substantial reductions in the System-Wide SO_2 emission cap provided for in the original consent decree; (4) to shutdown, repower or control three units (Big Sandy Unit 2, Muskingum River 5 and Tanners Creek Unit 4); (5) to the installation of 200 MW of renewable energy; (6) to provide the State Co-Plaintiffs with $6 million in additional mitigation funding; and (7) to provide the Citizen Plaintiffs with $2.5 million in mitigation funding for Indiana specific projects.

The publication of this notice opens a period of public comment on the third modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *American Electric Power Services Corp.*, D. J. Ref. No. 90–5–2–1–06893. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the third modification may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the third modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–05601 Filed 3–11–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Code Assignment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Occupational Code Assignment," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before April 11, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, http://www.reginfo.gov/public/do/PRAMain, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Information collected on the Occupational Code Assignment Form (Form ETA–741) is necessary to help occupational information users relate an occupational specialty or job title to an occupational code and title within the framework of the Occupational Information Network. The form helps provide occupational codes for jobs where duties have changed to the extent that the published information is no longer appropriate or the user is unable to classify the job on his or her own.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0137. The current approval is scheduled to expire on March 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 21, 2012 (77 FR 69897).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0137. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Occupational Code Assignment.

OMB Control Number: 1205–0137.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 14.

Total Estimated Number of Responses: 14.

Total Estimated Annual Burden Hours: 7.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 5, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–05581 Filed 3–11–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2013 Allowable Charges for Agricultural Workers' Meals and Travel Subsistence Reimbursement, Including Lodging

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce (1) the allowable charges for 2013 that employers seeking H–2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2013. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: *Effective Date:* This notice is effective on March 12, 2013.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, Room C–4312, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The United States (U.S.) Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H–2A labor certification. The H–2A labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H–2A workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.*

The Department provides, at 20 CFR 655.173(a), the methodology for determining the maximum amounts that H–2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. This methodology provides for annual adjustments of the previous year's maximum allowable charge based upon updated Consumer Price Index (CPI) data. The maximum charge allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) [1]. The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The Department has determined that the percentage change between December of 2011 and December of 2012 for the CPI–U for Food was 2.6 percent. Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than $11.42 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The regulations at 20 CFR 655.122(h) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount permitted under § 655.173(a), i.e. the charge annually adjusted by the 12-month percentage change in CPI for all Urban Consumers for food. The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department bases the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at *www.gsa.gov/perdiem*. The CONUS minimum meals component remains $46.00 per day for 2013.[2] Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of $34.50, as provided for in the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173(a) as specified above.

The term "subsistence" includes both meals and lodging during travel to and from the worksite. Therefore, an employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and upon the worker completing the contract, return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well.

[1] Consumer Price Index—December 2012, published January 16, 2013 at *http://data.bls.gov/pdq/SurveyOutputServlet*

[2] Maximum Per Diem Rates for the Continental United States (CONUS), 77 FR 54578 (Sept. 5, 2012); see also *www.gsa.gov/perdiem*.

The Department interprets the regulation to require the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for lodging costs, please see the Department's H–2A Frequently Asked Questions on Travel and Daily Subsistence, which may found on the OFLC Web site: *http://www.foreignlaborcert.doleta.gov/.*

Signed in Washington, DC on this 27th day of February, 2013.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2013–05580 Filed 3–11–13; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program 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 Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: *Claim for Compensation by Dependents Information Reports (CA–5, CA–5b, CA–1031, CA–1074, Letter of Compensation Due at Death and Letter of Student/Dependency).* A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 13, 2013.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3233, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *Ferguson.Yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The forms included in this package are forms used by Federal employees and their dependents to claim benefits, to prove continued eligibility for benefits, to show entitlement to remaining compensation payments of a deceased employee and to show dependency under the Federal Employees' Compensation Act. There are six forms in this information collection request. The information collected by Forms CA–5, is used by dependents for claiming compensation for the work related death of a Federal Employee and CA–5b is used by other survivors. Form CA–1031 is used in disability cases and provides information to determine whether a claimant is actually supporting a dependent and is entitled to additional compensation. Form CA–1074 is a follow up to CA–5b to request clarification of any information that is unclear and incomplete in the CA–5b. The letter of "Compensation Due at Death" is used to request information necessary to distribute compensation due when an employee dies who was receiving or who was entitled to compensation at the time of death for either disability benefits or a scheduled award. The letter of "Student/Dependency" is used to obtain information regarding the student status of a dependent. When a child reaches 18 years of age, they are no longer considered an eligible dependent unless they are a full time student or incapable of self-support. This information collection is currently approved for use through July 31, 2013.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees' Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Claim for Compensation by Dependents Information Reports.

OMB Number: 1240–0013.

Agency Number: CA–5, CA–5b, CA–1031, CA–1074, Letter of Compensation Due at Death and Letter of Student/Dependency.

Affected Public: Individuals or households.

Total Respondents: 2,920.

Total Responses: 2,920.

Form/Letter	Time to complete	Frequency of response	Number of respondents	Hours burden
CA–5	90 min	1	105	158
CA–5b	90 min	1	11	17
CA–1031	20 min	1	190	63
CA–1074	60 min	1	52	52
Student Dependency	30 min	1	1,514	757
Comp Due at Death	30 min	1	1,048	524
Totals			2,920	1,571

Estimated Total Burden Hours: 1,571.

Total Burden Cost (capital/startup): $1,431.

Total Burden Cost (operating/maintenance): $28,920.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 5, 2013.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2013–05590 Filed 3–11–13; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program 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 Office of Workers' Compensation Programs is soliciting comments concerning the proposal to extend OMB approval of the information collection: Notice of Issuance of Insurance Policy (CM–921). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 13, 2013.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–32331, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *Ferguson.Yoon@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

Section 423 of the Black Lung Benefits Act, as amended, requires that a responsible coal mine operator be insured and outlines the items each contract of insurance must contain. It also enumerates the civil penalties to which a responsible coal mine operator is subject, should these procedures not be followed. Further, 20 CFR par V, subpart C, 726.208–213 requires that each insurance carrier shall report to the Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to responsible operators. It states that this report will be made in such manner and on such a form as DCMWC may require. The CM–921 is the form completed by the insurance carrier and forwarded to DCMWC for review. It is also required that if a policy is issued or renewed for more than one operator, a separate report for each operator shall be submitted. This information collection is currently approved for use through May 31, 2013.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to identify operators who have secured insurance for payment of black lung benefits as required by the Act.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Notice of Issuance of Insurance Policy.

OMB Number: 1240–0048.

Agency Number: CM–921.

Affected Public: Business or other for profit; Federal Government and State, Local or Tribal Government.

Total Respondents: 4.

Total Annual Responses: 50.

Estimated Time per Response: 10 minutes.

Frequency: Annually.

Estimated Total Burden Hours: 8.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $27.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 6, 2013.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2013–05591 Filed 3–11–13; 8:45 am]

BILLING CODE 4510–CK–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 April 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 Agriculture, Forest Service (N1–95–10–7, 9 items, 3 temporary items). Records related to geographic information systems and sign and poster guidelines. Proposed for permanent retention are fire dispatch logs, land transfer case files, records of high-level officials, historically significant accident investigations, special maps, and land surveys.

2. Department of Agriculture, Forest Service (N1–95–12–2, 4 items, 4 temporary items). Records related to the construction and administration of research facilities.

3. Department of the Army, Agency-wide (N1–AU–10–36, 1 item, 1 temporary item). Master files of an electronic information system used to track real property permits, leases, and licenses.

4. Department of the Army, Agency-wide (N1–AU–10–98, 3 items, 3 temporary items). Records related to reimbursements for medical treatment at military facilities.

5. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0018, 2 items, 2 temporary items). Master files of electronic information systems related to the Medicaid Drug Rebate Program.

6. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–12–5, 2 items, 2 temporary items). User accounts and associated information in an electronic information system used to file immigration benefits.

7. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–12–6, 2 items, 2 temporary items). Master files of an electronic information system used to process immigration applications and petitions.

8. Department of the Interior, Bureau of Ocean Energy Management (N1–589–12–1, 23 items, 22 temporary items). Records documenting administrative

activities including budget, human resources, facilities, audit, and litigation. Proposed for permanent retention is general correspondence of the director.

9. Department of the Interior, Bureau of Safety and Environmental Enforcement (N1–473–12–1, 23 items, 22 temporary items). Records documenting administrative activities including budget, human resources, facilities, audit, and litigation. Proposed for permanent retention is general correspondence of the director.

10. Department of Justice, Agency-wide (DAA–0060–2013–0002, 2 items, 2 temporary items). Original content and posting log for third-party social media sites.

11. Department of Justice, Drug Enforcement Administration (N1–170–12–4, 1 item, 1 temporary item). Freedom of Information Act and Privacy Act administrative and litigation records.

12. Department of Labor, Wage and Hour Division (N1–155–11–3, 16 items, 14 temporary items). Records documenting mission-related activities such as registrations, wage determinations, sanctions, penalties, and training materials. Proposed for permanent retention are significant enforcement intervention records and agreements.

13. Department of the Navy, Agency-wide. (DAA–0428–2012–0003, 6 items, 6 temporary items). Correspondence and related records regarding instructors and the administration of Reserve Officers Training Corps and similar programs in secondary schools.

14. Department of the Treasury, Financial Crimes Enforcement Network (N1–559–10–1, 4 items, 4 temporary items). Master files and inputs of an electronic information system used to collect information to investigate financial crimes.

15. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0003, 1 item, 1 temporary item). Records used to monitor content and communication on social networking sites where interaction between site users and the agency occurs.

16. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0004, 1 item, 1 temporary item). Master files of an electronic information system used to review electronic tax returns.

17. Administrative Office of the United States Courts, United States Court of Federal Claims (N1–502–11–1, 8 items, 2 temporary items). Vaccine and general jurisdiction case files not deemed to have historic value. Proposed for permanent retention are significant vaccine case files, Indian claims case files, files for general jurisdiction cases terminating during or after trial, and Congressional reference case files and final reports.

18. Federal Communications Commission, International Bureau (N1–173–11–7, 22 items, 22 temporary items). Master files, inputs, and outputs of an electronic information system used to track applications, final authorizations, and related documents for services regulated by the agency. Applications include information such as filer identification, verifying documentation, and forms.

19. Federal Communications Commission, Media Bureau (N1–173–11–3, 1 item, 1 temporary item). Master files of an electronic information system concerning commercial television broadcast licensees' reporting on children's television programming.

Dated: March 5, 2013.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2013–05605 Filed 3–11–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, March 14, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Rules and Regulations, Federal Credit Union Ownership of Fixed Assets.

2. Request from Cinfed Federal Credit Union to Convert to a Community Charter.

RECESS: 10:30 a.m.

TIME AND DATE: 10:45 a.m., Thursday, March 14, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Purchase and Assumption Request provisions of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Merger Request provisions of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Requests under Section 205(d) of the Federal Credit Union Act (2). Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2013–05692 Filed 3–8–13; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: March 2013

TIME AND DATES: All meetings are held at 2:00 p.m.
Thursday, March 7;
Wednesday, March 13;
Thursday, March 14;
Wednesday, March 20;
Thursday, March 21;
Wednesday, March 27;
Thursday, March 28.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Dated: March 8, 2013.

Gary Shinners,

Acting Executive Secretary.

[FR Doc. 2013–05731 Filed 3–8–13; 11:15 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Social and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following Site Visit.

Name: Proposal Review Panel for Social and Economic Sciences, #10748.

Date and Time: March 21, 2013 8:30 a.m. to 5:00 p.m., March 22, 2013 8:00 a.m. to 2:00 p.m.

Place: Arizona State University, Tempe, Arizona.

Type of Meeting: Partially Open.

Contact Person: Dr. Robert O'Connor, Program Director for Decision, Risk & Management Sciences (DRMS) Program, National Science Foundation, 4201 Wilson Boulevard, Suite 995N, Arlington, VA 22230, Telephone: (703) 292–7285.

Agenda:

March 21, 2013

8:30 a.m.–12:00 p.m. Meet with researchers at the Decision Center for a Desert City (DCDC), Arizona State University (Closed)

12:00 p.m.–1:00 p.m. Executive session working lunch by site visit team (Closed)

1:00 p.m.–1:30 p.m. Meet with graduate students (Open)

1:30 p.m.–6:00 p.m. Site visit team discusses progress and plans with DCDC and drafting report (Closed)

March 22, 2013

8:00 a.m.–2:00 p.m. Meet with DCDC Site visit team, prepare and finalize report (Closed)

Purpose of Meeting: To direct a site visit to the Decision Center for a Desert City at the Arizona State University.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 7, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–05592 Filed 3–11–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0047]

Compendium of Analyses To Investigate Select Level 1 Probabilistic Risk Assessment End-State Definition and Success Criteria Modeling Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft report for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a document entitled: Compendium of Analyses to Investigate Select Level 1 Probabilistic Risk Assessment End-State Definition and Success Criteria Modeling Issues—Draft Report for Comment.

DATES: Please submit comments by May 15, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0047. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0047. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0047 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0047.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The subject report is available electronically under ADAMS Accession Number ML13060A491.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0047 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

FOR FURTHER INFORMATION CONTACT: Donald Helton, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7000, email: *Donald.Helton@nrc.gov.*

SUPPLEMENTARY INFORMATION: This report, "Compendium of Analyses to Investigate Select Level 1 Probabilistic Risk Assessment End-State Definition and Success Criteria Modeling Issues," augments the existing collection of contemporary Level 1 PRA success criteria analyses for the purpose of (i) Maintaining and enhancing the Standardized Plant Analysis Risk (SPAR) models being developed by the NRC; (ii) supporting the NRC's risk analysts when addressing specific issues in the Accident Sequence Precursor (ASP) program and the Significance Determination Process (SDP); and (iii) informing other ongoing and planned initiatives.

Dated at Rockville, Maryland, this 4th day of March 2013.

For the Nuclear Regulatory Commission.

Kevin A. Coyne,

Chief, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2013–05618 Filed 3–11–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–23694–SP; ASLBP No. 13–925–01–SP–BD01]

Charlissa C. Smith (Denial of Senior Reactor Operator License)

Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board (Board) in the above-captioned *Charlissa C. Smith* case is hereby reconstituted because Administrative Judge Alan S. Rosenthal, who has been serving as Board Chairman, is unavailable for continued service on this case. Administrative Judge Ronald M. Spritzer, who currently is serving on the Board, is appointed to serve as the Board Chairman, and Administrative Judge William J. Froehlich is appointed to serve as the third member of the Board in place of Judge Rosenthal.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302 *et seq.*

Issued at Rockville, Maryland this 5th day of March 2013.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2013–05614 Filed 3–11–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0039]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene, order.

DATES: Comments must be filed by April 11, 2013. A request for a hearing must be filed by May 13, 2013. Any potential party as defined in section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by March 22, 2013.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0039. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0039. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0039 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0039.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0039 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone

at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: November 21, 2012. A publicly available version is in ADAMS under Accession No. ML123380336.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise NMP2 Technical Specification (TS) Section 3.4.11, "RCS Pressure and Temperature (P/T) Limits," by replacing the existing reactor vessel heatup and cooldown rate limits and the pressure and temperature (P–T) limit curves with references to the Pressure and Temperature Limits Report (PTLR). In addition, a new definition for the PTLR would be added to TS Section 1.1, "Definitions," and a new section

addressing administrative requirements for the PTLR would be added to TS Section 5.0, "Administrative Controls."

Relocation of the P–T limit curves to the PTLR is consistent with the guidance provided in NRC approved General Electric Hitachi Nuclear Engineering (GEH) Licensing Topical Report, NEDC–33178P–A, Revision 1, "General Electric Methodology for Development of Reactor Pressure Vessel Pressure-Temperature Curves." This topical report uses the guidelines provided in NRC Generic Letter (GL) 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits." The proposed TS changes are consistent with the guidance provided in GL 96–03 as supplemented by Technical Specification Task Force (TSTF) traveler TSTF–419–A, "Revise PTLR Definition and References in ISTS [Improved Standard Technical Specifications] 5.6.6, RCS PTLR."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment modifies the TS by replacing references to existing reactor vessel heatup and cooldown rate limits and P–T limit curves with references to the PTLR. The proposed amendment also adopts the NRC-approved methodology of NEDC–33178P–A for the preparation of NMP2 P–T limit curves. In 10 CFR Part 50, Appendix G, requirements are established to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. Implementing the NRC-approved methodology for calculating P–T limit curves and relocating those curves to the PTLR provide an equivalent level of assurance that RCPB integrity will be maintained, as specified in 10 CFR Part 50, Appendix G.

The proposed amendment does not adversely affect accident initiators or precursors, and does not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change in methodology for calculating P–T limits and the relocation of those limits to the PTLR do not alter or involve any design basis accident initiators. RCPB integrity will continue to be maintained in accordance with 10 CFR Part 50, Appendix G, and the accident performance of plant structures, systems and components will not be affected. These changes do not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect the function of the RCPB or its response during plant transients. By calculating the P–T limits using NRC-approved methodology, adequate margins of safety relating to RCPB integrity are maintained. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined, there are no changes to setpoints at which protective actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey W. Fleming, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

NRC Branch Chief: George Wilson.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: September 25, 2012, as supplemented by letter dated December 20, 2012 (NL–12–1893). A publicly available version of the September 25, 2012, letter is in ADAMS under Accession No. ML12279A235.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment requests the review and approval for adoption of a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and 50.48(c), and the guidance in Regulatory Guide (RG) 1.205, Revision 1, *Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants.*

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the transition to NFPA 805 involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of Farley Nuclear Plant, Units 1 and 2, in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been satisfied. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents at Farley Nuclear Plant, Units 1 and 2. The proposed amendment does not affect accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility that would increase the probability of accidents previously evaluated. Further, the changes to be made for fire hazard protection and mitigation do not adversely affect the ability of structures, systems, or components (SSCs) to perform their design functions for accident mitigation, nor do they affect the postulated initiators or assumed failure modes for accidents described and evaluated in the UFSAR. Structures, systems, or components required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Farley Nuclear Plant, Units 1 and 2, to adopt a new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met.

NFPA taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR Part 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and provides for defense-in-depth. The goals, performance objectives, and performance criteria specified in Chapter 1 of the standard ensure that, if there are any increases in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy. Based on this, the implementation of the proposed amendment does not increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function(s). The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The applicable radiological dose criteria will continue to be met.

Therefore, the consequences of any accident previously evaluated are not increased with the implementation of the proposed amendment.

2. Does the transition to NFPA 805 create the possibility of a new or different kind of accident from any kind of accident previously evaluated?

Response: No.

Operation of Farley Nuclear Plant, Units 1 and 2, in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the requirements or functions for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance Regulatory Guide 1.205 will not result in new or different accidents.

The proposed amendment does not introduce new or different accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. Structures, systems, or components required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Farley Nuclear Plant, Units 1 and 2, to adopt a new fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and appropriate performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536; June 16, 2004).

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Based on this, implementation of the proposed amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of the proposed amendment.

3. Does the transition to NFPA 805 involve a significant reduction in the margin of safety?

Response: No.

Operation of Farley Nuclear Plant, Units 1 and 2, in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. Structures, systems, or components required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to permit Farley Nuclear Plant, Units 1 and 2, to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance based requirements of NFPA 805 do not result in a significant reduction in the margin of safety.

The proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits.

Therefore, the transition to NFPA 805 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review; it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Robert J. Pascarelli.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have proposed contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 26th day of February 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition tor intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention: +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/activity
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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NUCLEAR REGULATORY COMMISSION

[NRC–2013–0048]

Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment Draft Regulatory Guide, DG–1269 "Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants." The draft guide describes methods that the NRC staff consider acceptable for use in complying with the agency's regulations with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants.

DATES: Submit comments by May 13, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0048. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0048. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Liliana Ramadan, telephone: 301–251–7642, email: *liliana.ramadan@nrc.gov*, or Edward O'Donnell, telephone: 301–251–7455, or by email: *edward.odonnell@nrc.gov*. Both of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0048 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0048.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The draft regulatory guide is available electronically under ADAMS Accession No. ML110870131. The regulatory analysis may be found in ADAMS under Accession No. ML110870160.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0048 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or

entering the comment submissions into ADAMS.

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants" is temporarily identified by its task number, DG–1269, which should be mentioned in all related correspondence. DG–1269 is proposed Revision 3 of Regulatory Guide (RG) 1.129, dated February 2007. The NRC developed this regulatory guide to describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants. Specifically, the method described in this regulatory guide relates to General Design Criteria (GDC) 1, 17, and 18 as set forth in Appendix A, "General Design Criteria for Nuclear Power Plants," to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities."

DG–1269 endorses (with certain clarifying regulatory positions) the Institute of Electrical and Electronics Engineers IEEE Std 450–2010, "IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications." That standard is an update of IEEE Std 450–2002 upon which RG 1.129, Rev. 2 is based. The revised IEEE Std 450–2010 refines the condition monitoring guidance and the use of rate-adjusted test methods for acceptance testing to ensure consistent performance of vented lead-acid batteries. The revised guidance addresses (1) Evaluating the adequacy of the modified performance tests for batteries, (2) the use of charging current to assess the fully-charged condition of batteries, (3) determining the point at which a battery can be returned to service and be able to meet its capacity and capability requirements, and (4) consistency with standard technical specifications regarding battery monitoring criteria. The revised guide would be useful in support of new reactor license applications, design certifications, and applications for license amendments.

III. Backfitting and Issue Finality

This draft regulatory guide, if finalized, does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." This draft regulatory guide, if finalized, will provide guidance on one possible means for meeting NRC's regulatory requirements with regard to the maintenance, testing, and replacement of vented lead-acid storage batteries in nuclear power plants in GDCs 1, 17 and 18, and the qualification testing requirements of Criterion III of 10 CFR part 50, Appendix B. Existing licensees and applicants of final design certification rules will not be required to comply with the positions set forth in this draft regulatory guide, unless the licensee or design certification rule applicant seeks a voluntary change to its licensing basis with respect to maintenance, testing, or replacement of vented lead-acid storage batteries, and where the NRC determines that the safety review must include consideration of the maintenance, testing, or replacement of vented lead-acid storage batteries. Further information on the staff's use of the draft regulatory guide, if finalized, is contained in DG–1269 under section D, *Implementation*.

Dated at Rockville, Maryland, this 1st day of March 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–05612 Filed 3–11–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of March 11, 18, 25, April 1, 8, 15, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 11, 2013

Monday, March 11, 2013

9:15 a.m. Affirmation Session (Public Meeting) (Tentative)
Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52–016–COL, Petition for Review of LBP–12–19 (Tentative)

Week of March 18, 2013—Tentative

There are no meetings scheduled for the week of March 18, 2013.

Week of March 25, 2013—Tentative

There are no meetings scheduled for the week of March 25, 2013.

Week of April 1, 2013—Tentative

Tuesday April 2, 2013

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 8, 2013—Tentative

There are no meetings scheduled for the week of April 8, 2013.

Week of April 15, 2013—Tentative

There are no meetings scheduled for the week of April 15, 2013.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 7, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–05763 Filed 3–8–13; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0041]

Proposed Revision to Design of Structures, Components, Equipment and Systems; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment and use; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on March 1, 2013 (41 FR 13911), that announced the solicitation for comments of the proposed revision in Chapter 3, "Design of Structures, Components, Equipment, and Systems" and is soliciting public comment on NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition." This action is necessary to correct the date of the document. This action also corrects an incorrect Agency Wide Document Management System Accession Number contained in the "Supplementary Information" section of the notice.

FOR FURTHER INFORMATION CONTACT: Ms. Amy E. Cubbage, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2875, email: *Amy.Cubbage@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 13911, middle column under the header: NRC's Agencywide Documents Access and Management System (ADAMS), change sentence, Section 3.8.3, Proposed Revision 4 (ML12353A377), Current Revision 3 (ML100620981), Redline (ML12354A089). Also on the same page, third column, last but second line from the bottom change the date of the document to 14th day of February 2013.

Dated at Rockville, Maryland, this 4th day of March 2013.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–05616 Filed 3–11–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Renewal: Information Collection; Questionnaire for National Security Positions, Standard Form 86 (SF 86)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–0005, for Questionnaire for National Security Positions, Standard Form 86 (SF 86). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

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

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 13, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Donna McLeod or sent via email to *FISFormsComments@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Donna McLeod or sent via email to *FISFormsComments@opm.gov*.

SUPPLEMENTARY INFORMATION: The Questionnaire for National Security Positions, SF 86, housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing), is an information collection completed by applicants for, or incumbents of, Federal Government civilian or military positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information:

- By the Federal Government in conducting background investigations, reinvestigations, and continuous evaluations, as appropriate, of persons under consideration for or retention in national security sensitive positions as defined in Executive Order 10450 and 5 CFR part 732, and for positions requiring eligibility for access to classified information under Executive Order 12968;
- By agencies in determining whether a person performing work for or on behalf of the Federal Government under a contract should be deemed eligible for logical or physical access when the nature of the work is sensitive and could bring about a material adverse effect on national security.

The SF 86 is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including Federal contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. For applicants for civilian Federal employment, the SF 86 is to be used only after a conditional offer of employment has been made. It is estimated that 263,566 non-federal individuals, will complete the SF 86 annually. The SF 86 takes approximately 150 minutes to complete. The estimated annual burden is 658,915 hours. e-QIP is a web-based system application that currently houses electronic versions of the SF 86. This electronic data collection tool provides

immediate data validation to ensure accuracy of the respondent's personal information. The e-Government initiative mandates that agencies utilize e-QIP for all investigations and reinvestigations. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to a particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. As such, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history. Additionally, once entered, a respondent's complete and certified investigative data remains secured in the e-QIP system until the next time the respondent is sponsored by an agency to complete a new investigative form. Upon initiation, the respondent's previously entered data (except "yes/no" questions) will populate a new investigative request and the respondent will be allowed to update information and certify the data. In this instance, time to complete the form is reduced significantly.

OPM proposes the following changes to instructions in the SF 86. The section, "Instructions for Completing This Form (Paper Form Only)," will be amended to delete the instruction "If additional space is required for an explanation or to list your residences, employment/self-employment, or education, you should use a continuation sheet, SF 86A." The SF 86A is no longer useful as SF 86 requests are conducted entirely through e-QIP. The instructions in Section 11, "Where You Have Lived," will provide clarifying instruction to not list a spouse, cohabitant, or relative as the verifier for periods of residence. The instructions in Section 12, "Where You Went to School," will include the Department of Education Web site (*http://ope.ed.gov/accreditation/search.aspx*) to assist respondents in obtaining their school address(es). The instructions in Section 20b, "Foreign Government Contacts," regarding contact with a foreign government, will be amended so that the respondent need report neither contact related to official U.S. Government travel (including official contact as a U.S. military service member on a U.S. Government military duty assignment) nor contact related to routine visa applications and border crossings on a U.S. passport. Section 20c, "Foreign Travel," will be amended to clarify that travel solely for U.S. Government business is travel on official Government orders. Section 23, "Illegal Use of Drugs and Drug Activity," will include instruction to clarify that drug use or activity illegal under Federal laws must be reported, even if that use or activity is legal under state or local law(s). OPM intends to amend the "Authorization for Release of Information" to clarify that information obtained from "other sources of information" includes publicly available electronic information.

OPM proposes the following change to more accurately collect information regarding legally recognized relationships. Section 17, "Marital Status," will be renamed "Marital/Relationship Status." Where the form requires collection of information regarding civil marriages and divorces, the same collection of information will be required of legally recognized civil unions and legally recognized domestic partnerships, and dissolutions of these. Since information regarding legally recognized civil unions and domestic partnerships will be captured in the "Marital/Relationship Status" section, the definition of cohabitant will be amended to exclude legally recognized civil unions and legally recognized domestic partnerships. Changes will be made to the branching questions in Section 20a, "Foreign Activities," to collect details regarding prior ownership of foreign real estate that has since been sold. This change will correct a deficit in the branching questions that do not currently account for this scenario.

OPM is proposing to make changes to Question 21, "Psychological and Emotional Health," in connection with a comprehensive review being conducted by the Director of National Intelligence, in his role as Security Executive Agent, with the Department of Defense, OPM, and other Federal agencies, for the purpose of clarifying support for mental health treatment and encouraging pro-active management of mental health conditions to support wellness and recovery.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–05611 Filed 3–11–13; 8:45 am]

BILLING CODE 6325–53–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 19d–1; SEC File No. 270–242, OMB Control No. 3235–0206.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 19d–1 prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary actions with respect to any person; (2) denial, bar, prohibition, or limitation of membership, participation or association with a member or of access to services offered by an SRO or member thereof; (3) summarily suspending a member, participant, or person associated with a member, or summarily limiting or prohibiting any persons with respect to access to or services offered by the SRO or a member thereof; and (4) delisting a security.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to delist a security, discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that approximately eighteen respondents will utilize this application procedure annually, with a total burden of approximately 2,250 hours, based upon past submissions. This figure is based on eighteen respondents, spending approximately 125 hours each per year. It is estimated that each respondent will submit approximately 250 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, it is estimated that the internal labor cost of compliance for all respondents is approximately $227,250. (18 respondents × 250 responses per respondent × 0.5 hours per response × $101 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 5, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05569 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 19d–3; SEC File No. 270–245; OMB Control No. 3235–0204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3) under the Securities Exchange Act of 1934 (17 U.S.C. 78a et seq.) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 19d–3 prescribes the form and content of applications to the Commission by persons seeking Commission review of final disciplinary actions against them taken by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Final disciplinary sanctions; (2) denial or conditioning of membership, participation or association; and (3) prohibitions or limitations of access to services offered by a SRO or member thereof.

It is estimated that approximately six respondents will utilize this application procedure annually, with a total burden of approximately 108 hours, for all respondents to complete all submissions. This figure is based upon past submissions. It is estimated that each respondent will submit approximately one response. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 will be approximately eighteen hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, it is estimated the internal labor cost of compliance for all respondents is approximately $10,908 (6 submissions x 18 hours per response x $101 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 5, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05573 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69062; File No. 4–631]

Joint Industry Plan; Notice of Filing of the Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

March 7, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 thereunder [2],

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

notice is hereby given that, on February 21, 2013, NYSE Euronext, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), and NYSE Arca, Inc. ("NYSE Arca"), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").[3] The proposal represents the third amendment to the Plan ("Third Amendment"), and reflects changes unanimously approved by the Participants. The Third Amendment to the Plan proposes to amend the Plan to provide that odd-lot sized transactions will not be exempt from the Plan and proposes to make a clarifying technical change. A copy of the Plan, as proposed to be amended, is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Third Amendment to the Plan.

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.[4] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[5] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[6] The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[7] Those price bands would be based on a Reference Price[8] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter[9] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid[10] or National Best Offer[11] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[12] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[13] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses[14] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers[15] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish,

[3] *See* Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 19, 2013 ("Transmittal Letter").

[4] 17 CFR 242.600(b)(47). *See also* Section I(II) of the Plan.

[5] *See* Section V of the Plan.

[6] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. *See* Exhibit A, *infra*.

[7] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[8] *See* Section I(T) of the Plan.

[9] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.*, stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.*, all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 ("First Amendment").

[10] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[11] *Id.*

[12] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(B) of the Plan.

[13] *See* Section I(D) of the Plan.

[14] The primary listing market would declare a trading pause in an NMS Stock, upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[15] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[16] thereby protecting investors and promoting a fair and orderly market.[17] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[18]

The following summarizes the Third Amendment to the Plan and the rationale behind those changes:

- Amending Section VI.A.1 of the Plan to clarify that odd-lot sized transactions are not exempt from the Plan. The Participants believe that odd-lot sized transactions should benefit from the protections of the Plan.
- Amending Section VIII.A.3 of the Plan to clarify that no Price Bands shall be calculated and disseminated and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours. The proposed change is designed to reduce confusion by correcting language in the Plan.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan. In particular, as set forth in Section V of the Plan, the Processor will be responsible for calculating and disseminating Price Bands during Regular Trading Hours, as defined in Section I(R) of the Plan. Each Participant would take such actions as are necessary and appropriate as a party to the Market Data Plans, as defined in Section I(F) of the Plan, to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in the Plan.

C. Implementation of Plan

The initial date of the Plan operations will be April 8, 2013.

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation will begin on the initial date of Plan operations, in select symbols, with full Phase I of the Plan implementation completed three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice; Phase II of Plan will commence six months after the initial date of the Plan or such earlier date as may be announced by the Processor with at least 30 days notice. The Participants proposed that Phase II of the Plan will begin on the first Monday after the six months after the initial date of the Plan, or if an earlier date is determined, Phase II will begin on a Monday.

At the beginning of Phase I, the Plan shall apply to select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan. During full Phase I implementation, the Plan shall apply to all Tier 1 NMS Stocks, as defined in Appendix A of the Plan, and the first price bands shall be calculated and disseminated as specified in Section V(A) of the Plan. In Phase II, the Plan shall fully apply to all NMS Stocks.

Phase I and Phase II of the Plan may each be rolled out to applicable NMS Stocks over a period not to exceed two weeks. Any such roll-out period will be made available in advance of the implementation dates for Phases I and II of the Plan via the Participants' Web sites and trader updates, as applicable.

E. Analysis of Impact on Competition

The Participants do not believe that the Plan imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants also do not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[19]

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants state that they have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

The Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee.[20] No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee shall monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee

[16] 17 CFR 242.600(b)(47).

[17] *See* Transmittal Letter, *supra* note 3.

[18] The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. *See e.g.*, Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[19] 15 U.S.C. 78k–1(c)(1)(D).

[20] *See* Section I(J) of the Plan.

that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.[21]

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Third Amendment to the Plan 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 4–631 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 4–631. 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 Third Amendment to the Plan that are filed with the Commission, and all written communications relating to the Third Amendment to the Plan 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. 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 4–631 and should be submitted on or before April 2, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

Exhibit A

Proposed new language is *italicized;* proposed deletions are in [brackets].

Plan To Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934

Table of Contents

Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) "Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(C) "Limit State" shall have the meaning provided in Section VI of the Plan.

(D) "Limit State Quotation" shall have the meaning provided in Section VI of the Plan.

(E) "Lower Price Band" shall have the meaning provided in Section V of the Plan.

(F) "Market Data Plans" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) "National Best Bid" and "National Best Offer" shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) "NMS Stock" shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) "Opening Price" shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) "Operating Committee" shall have the meaning provided in Section III(C) of the Plan.

(K) "Participant" means a party to the Plan.

(L) "Plan" means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) "Percentage Parameter" shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) "Price Bands" shall have the meaning provided in Section V of the Plan.

(O) "Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier

[21] 17 CFR 242.608.

than 4:00 p.m. ET in the case of an early scheduled close.

(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Z) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(3) Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, Illinois 60605
(4) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605
(5) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor Jersey City, NJ 07310
(6) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor Jersey City, NJ 07310
(7) Financial Industry Regulatory Authority, Inc., 1735 K Street NW., Washington, DC 20006
(8) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006
(9) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103
(10) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006
(11) National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302
(12) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005
(13) NYSE MKT LLC, 20 Broad Street, New York, New York 10005
(14) NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) A broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established

pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late *or because the*

transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (i.e., a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Five Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared less than five minutes before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

(A) Phase I

(1) On the initial date of Plan operations, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(2) Three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated *and therefore trading shall not enter a Limit State* less than 30 minutes before the end of Regular Trading Hours[, and trading shall not enter a Limit State less than 25 minutes before the end of Regular Trading Hours].

(B) Phase II—Full Implementation

Six months after the initial date of Plan operations, or such earlier date as

may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close.

(C) Pilot

The Plan shall be implemented on a one-year pilot basis.

IX. Withdrawal From Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the ___ day of ___ 2013 by each of the parties hereto.

BATS EXCHANGE, INC.
BY:
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
BY:
EDGA EXCHANGE, INC.
BY:
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY:
NASDAQ OMX PHLX LLC
BY:
NATIONAL STOCK EXCHANGE, INC.
BY:
NYSE MKT LLC
BY:
BATS Y-EXCHANGE, INC.
BY:
CHICAGO STOCK EXCHANGE, INC.
BY:
EDGX EXCHANGE, INC.
BY:
NASDAQ OMX BX, INC.
BY:
THE NASDAQ STOCK MARKET LLC
BY:
NEW YORK STOCK EXCHANGE LLC
BY:
NYSE ARCA, INC.
BY:

Appendix A—Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products ("ETP") listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a trading pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective Web sites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

APPENDIX A—SCHEDULE 1

Symbol	Name
AAVX	ETRACS Daily Short 1-Month S&P 500 VIX Futures ETN.
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund.
ACWI	iShares MSCI ACWI Index Fund.
ACWX	iShares MSCI ACWI ex US Index Fund.
AGG	iShares Barclays Aggregate Bond Fund.
AGZ	iShares Barclays Agency Bond Fund.
ALD	WisdomTree Asia Local Debt Fund.
AMJ	JPMorgan Alerian MLP Index ETN.
AMLP	Alerian MLP ETF.
BAB	PowerShares Build America Bond Portfolio.
BDG	PowerShares DB Base Metals Long ETN.
BIK	SPDR S&P BRIC 40 ETF.
BIL	SPDR Barclays Capital 1–3 Month T-Bill ETF.
BIV	Vanguard Intermediate-Term Bond ETF.
BKF	iShares MSCI BRIC Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
BKLN	PowerShares Senior Loan Portfolio.
BLV	Vanguard Long-Term Bond ETF.
BND	Vanguard Total Bond Market ETF.
BNO	United States Brent Oil Fund LP.
BOND	Pimco Total Return ETF.
BOS	PowerShares DB Base Metals Short ETN.
BRF	Market Vectors Brazil Small-Cap ETF.
BSV	Vanguard Short-Term Bond ETF.
BWX	SPDR Barclays Capital International Treasury Bond ETF.
BXDB	Barclays ETN+short B Leveraged ETN Linked to S&P 500.
CEW	WisdomTree Dreyfus Emerging Currency Fund.
CFT	iShares Barclays Credit Bond Fund.
CIU	iShares Barclays Intermediate Credit Bond Fund.
CLY	iShares 10+ Year Credit Bond Fund.
CORN	Teucrium Corn Fund.
CSJ	iShares Barclays 1–3 Year Credit Bond Fund.
CVY	Guggenheim Multi-Asset Income ETF.
CWB	SPDR Barclays Capital Convertible Securities ETF.
CWI	SPDR MSCI ACWI ex-US ETF.
CYB	WisdomTree Dreyfus Chinese Yuan Fund.
DBA	PowerShares DB Agriculture Fund.
DBB	PowerShares DB Base Metals Fund.
DBC	PowerShares DB Commodity Index Tracking Fund.
DBE	PowerShares DB Energy Fund.
DBO	PowerShares DB Oil Fund.
DBP	PowerShares DB Precious Metals Fund.
DBV	PowerShares DB G10 Currency Harvest Fund.
DEM	WisdomTree Emerging Markets Equity Income Fund.
DGL	PowerShares DB Gold Fund.
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund.
DGZ	PowerShares DB Gold Short ETN.
DHS	WisdomTree Equity Income Fund.
DIA	SPDR Dow Jones Industrial Average ETF Trust.
DJCI	E–TRACS UBS AG Dow Jones-UBS Commodity Index Total Return ETN.
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN.
DLN	WisdomTree LargeCap Dividend Fund.
DOG	ProShares Short Dow30.
DON	WisdomTree MidCap Dividend Fund.
DOO	WisdomTree International Dividend Ex-Financials Fund.
DTN	WisdomTree Dividend Ex-Financials Fund.
DVY	iShares Dow Jones Select Dividend Index Fund.
DWM	WisdomTree DEFA Fund.
DWX	SPDR S&P International Dividend ETF.
DXJ	WisdomTree Japan Hedged Equity Fund.
ECH	iShares MSCI Chile Investable Market Index Fund.
ECON	EGShares Emerging Markets Consumer ETF.
EDIV	SPDR S&P Emerging Markets Dividend ETF.
EDV	Vanguard Extended Duration Treasury ETF.
EEB	Guggenheim BRIC ETF.
EEM	iShares MSCI Emerging Markets Index Fund.
EFA	iShares MSCI EAFE Index Fund.
EFG	iShares MSCI EAFE Growth Index.
EFV	iShares MSCI EAFE Value Index.
EFZ	ProShares Short MSCI EAFE.
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund.
ELD	WisdomTree Emerging Markets Local Debt Fund.
ELR	SPDR Dow Jones Large Cap ETF.
EMB	iShares JPMorgan USD Emerging Markets Bond Fund.
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF.
EMM	SPDR Dow Jones Mid Cap ETF.
EPHE	iShares MSCI Philippines Investable Market Index Fund.
EPI	WisdomTree India Earnings Fund.
EPP	iShares MSCI Pacific ex-Japan Index Fund.
EPU	iShares MSCI All Peru Capped Index Fund.
ERUS	iShares MSCI Russia Capped Index Fund.
EUM	ProShares Short MSCI Emerging Markets.
EWA	iShares MSCI Australia Index Fund.
EWC	iShares MSCI Canada Index Fund.
EWD	iShares MSCI Sweden Index Fund.
EWG	iShares MSCI Germany Index Fund.
EWH	iShares MSCI Hong Kong Index Fund.
EWI	iShares MSCI Italy Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
EWJ	iShares MSCI Japan Index Fund.
EWL	iShares MSCI Switzerland Index Fund.
EWM	iShares MSCI Malaysia Index Fund.
EWP	iShares MSCI Spain Index Fund.
EWQ	iShares MSCI France Index Fund.
EWS	iShares MSCI Singapore Index Fund.
EWT	iShares MSCI Taiwan Index Fund.
EWU	iShares MSCI United Kingdom Index Fund.
EWW	iShares MSCI Mexico Investable Market Index Fund.
EWX	SPDR S&P Emerging Markets SmallCap ETF.
EWY	iShares MSCI South Korea Index Fund.
EWZ	iShares MSCI Brazil Index Fund.
EZA	iShares MSCI South Africa Index Fund.
EZU	iShares MSCI EMU Index Fund.
FBT	First Trust NYSE Arca Biotechnology Index Fund.
FCG	First Trust ISE-Revere Natural Gas Index Fund.
FDL	First Trust Morningstar Dividend Leaders Index.
FDN	First Trust Dow Jones Internet Index Fund.
FEX	First Trust Large Cap Core AlphaDEX Fund.
FEZ	SPDR EURO STOXX 50 ETF.
FGD	First Trust DJ Global Select Dividend Index Fund.
FLAT	iPath US Treasury Flattener ETN.
FNX	First Trust Mid Cap Core AlphaDEX Fund.
FRI	First Trust S&P REIT Index Fund.
FVD	First Trust Value Line Dividend Index Fund.
FXA	CurrencyShares Australian Dollar Trust.
FXB	CurrencyShares British Pound Sterling Trust.
FXC	CurrencyShares Canadian Dollar Trust.
FXD	First Trust Consumer Discretionary AlphaDEX Fund.
FXE	CurrencyShares Euro Trust.
FXF	CurrencyShares Swiss Franc Trust.
FXG	First Trust Consumer Staples AlphaDEX Fund.
FXH	First Trust Health Care AlphaDEX Fund.
FXI	iShares FTSE China 25 Index Fund.
FXL	First Trust Technology AlphaDEX Fund.
FXU	First Trust Utilities AlphaDEX Fund.
FXY	CurrencyShares Japanese Yen Trust.
FXZ	First Trust Materials AlphaDEX Fund.
GAZ	iPath Dow Jones-UBS Natural Gas Subindex Total Return ETN.
GCC	GreenHaven Continuous Commodity Index Fund.
GDX	Market Vectors Gold Miners ETF.
GDXJ	Market Vectors Junior Gold Miners ETF.
GIY	Guggenheim Enhanced Core Bond ETF.
GLD	SPDR Gold Shares.
GMF	SPDR S&P Emerging Asia Pacific ETF.
GNR	SPDR S&P Global Natural Resources ETF.
GOVT	iShares Barclays U.S. Treasury Bond Fund.
GSG	iShares S&P GSCI Commodity Indexed Trust.
GSP	iPath GSCI Total Return Index ETN.
GSY	Guggenheim Enhanced Short Duration Bond ETF.
GVI	iShares Barclays Intermediate Government/Credit Bond Fund.
GWX	SPDR S&P International Small Cap ETF.
GXC	SPDR S&P China ETF.
GXG	Global X FTSE Colombia 20 ETF.
HAO	Guggenheim China Small Cap ETF.
HDGE	Active Bear ETF/The.
HDV	iShares High Dividend Equity Fund.
HYD	Market Vectors High Yield Municipal Index ETF.
HYG	iShares iBoxx $ High Yield Corporate Bond Fund.
HYS	PIMCO 0–5 Year High Yield Corporate Bond Index Fund.
IAU	iShares Gold Trust.
IBB	iShares Nasdaq Biotechnology Index Fund.
ICF	iShares Cohen & Steers Realty Majors Index Fund.
ICI	iPath Optimized Currency Carry ETN.
IDU	iShares Dow Jones US Utilities Sector Index Fund.
IDV	iShares Dow Jones International Select Dividend Index Fund.
IDX	Market Vectors Indonesia Index ETF.
IEF	iShares Barclays 7–10 Year Treasury Bond Fund.
IEI	iShares Barclays 3–7 Year Treasury Bond Fund.
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund.
IEV	iShares S&P Europe 350 Index Fund.
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
IGE	iShares S&P North American Natural Resources Sector Index Fund.
IGF	iShares S&P Global Infrastructure Index Fund.
IGOV	iShares S&P/Citigroup International Treasury Bond Fund.
IGS	ProShares Short Investment Grade Corporate.
IGV	iShares S&P North American Technology-Software Index Fund.
IHE	iShares Dow Jones US Pharmaceuticals Index Fund.
IHF	iShares Dow Jones US Healthcare Providers Index Fund.
IHI	iShares Dow Jones US Medical Devices Index Fund.
IJH	iShares S&P MidCap 400 Index Fund.
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund.
IJK	iShares S&P MidCap 400 Growth Index Fund.
IJR	iShares S&P SmallCap 600 Index Fund.
IJS	iShares S&P SmallCap 600 Value Index Fund.
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund.
ILF	iShares S&P Latin America 40 Index Fund.
INDA	iShares MSCI India Index Fund.
INDY	iShares S&P India Nifty 50 Index Fund.
INP	iPath MSCI India Index ETN.
IOO	iShares S&P Global 100 Index Fund.
IPE	SPDR Barclays Capital TIPS ETF.
ITB	iShares Dow Jones US Home Construction Index Fund.
ITM	Market Vectors Intermediate Municipal ETF.
IVE	iShares S&P 500 Value Index Fund.
IVOO	Vanguard S&P Mid-Cap 400 ETF.
IVOP	iPath Inverse S&P 500 VIX Short-Term FuturesTM ETN II.
IVV	iShares S&P 500 Index Fund/US.
IVW	iShares S&P 500 Growth Index Fund.
IWB	iShares Russell 1000 Index Fund.
IWC	iShares Russell Microcap Index Fund.
IWD	iShares Russell 1000 Value Index Fund.
IWF	iShares Russell 1000 Growth Index Fund.
IWM	iShares Russell 2000 Index Fund.
IWN	iShares Russell 2000 Value Index Fund.
IWO	iShares Russell 2000 Growth Index Fund.
IWP	iShares Russell Midcap Growth Index Fund.
IWR	iShares Russell Midcap Index Fund.
IWS	iShares Russell Midcap Value Index Fund.
IWV	iShares Russell 3000 Index Fund.
IWW	iShares Russell 3000 Value Index Fund.
IWY	iShares Russell Top 200 Growth Index Fund.
IWZ	iShares Russell 3000 Growth Index Fund.
IXC	iShares S&P Global Energy Sector Index Fund.
IXG	iShares S&P Global Financials Sector Index Fund.
IXJ	iShares S&P Global Healthcare Sector Index Fund.
IXN	iShares S&P Global Technology Sector Index Fund.
IXP	iShares S&P Global Telecommunications Sector Index Fund.
IYC	iShares Dow Jones US Consumer Services Sector Index Fund.
IYE	iShares Dow Jones US Energy Sector Index Fund.
IYF	iShares Dow Jones US Financial Sector Index Fund.
IYG	iShares Dow Jones US Financial Services Index Fund.
IYH	iShares Dow Jones US Healthcare Sector Index Fund.
IYJ	iShares Dow Jones US Industrial Sector Index Fund.
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund.
IYM	iShares Dow Jones US Basic Materials Sector Index Fund.
IYR	iShares Dow Jones US Real Estate Index Fund.
IYT	iShares Dow Jones Transportation Average Index Fund.
IYW	iShares Dow Jones US Technology Sector Index Fund.
IYY	iShares Dow Jones US Index Fund.
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund.
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN.
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN.
JNK	SPDR Barclays Capital High Yield Bond ETF.
JXI	iShares S&P Global Utilities Sector Index Fund.
JYN	iPath JPY/USD Exchange Rate ETN.
KBE	SPDR S&P Bank ETF.
KBWB	PowerShares KBW Bank Portfolio.
KIE	SPDR S&P Insurance ETF.
KOL	Market Vectors Coal ETF.
KRE	SPDR S&P Regional Banking ETF.
KXI	iShares S&P Global Consumer Staples Sector Index Fund.
LAG	SPDR Barclays Capital Aggregate Bond ETF.
LQD	iShares iBoxx Investment Grade Corporate Bond Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
LTPZ	PIMCO 15+ Year US TIPS Index Fund.
LWC	SPDR Barclays Capital Long Term Corporate BondETF.
MBB	iShares Barclays MBS Bond Fund.
MBG	SPDR Barclays Capital Mortgage Backed Bond ETF.
MCHI	iShares MSCI China Index Fund.
MDY	SPDR S&P MidCap 400 ETF Trust.
MGC	Vanguard Mega Cap 300 ETF.
MGK	Vanguard Mega Cap 300 Growth ETF.
MINT	PIMCO Enhanced Short Maturity Strategy Fund.
MLPI	UBS E–TRACS Alerian MLP Infrastructure ETN.
MLPN	Credit Suisse Cushing 30 MLP Index ETN.
MOO	Market Vectors Agribusiness ETF.
MUB	iShares S&P National Municipal Bond Fund.
MXI	iShares S&P Global Materials Sector Index Fund.
MYY	ProShares Short MidCap 400.
NKY	MAXIS Nikkei 225 Index Fund ETF.
OEF	iShares S&P 100 Index Fund.
OIH	Market Vectors Oil Service ETF.
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN.
PALL	ETFS Physical Palladium Shares.
PBJ	Powershares Dynamic Food & Beverage Portfolio.
PCEF	PowerShares CEF Income Composite Portfolio.
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio.
PDP	Powershares DWA Technical Leaders Portfolio.
PEY	PowerShares High Yield Equity Dividend Achievers Portfolio.
PFF	iShares S&P US Preferred Stock Index Fund.
PFM	PowerShares Dividend Achievers Portfolio.
PGF	PowerShares Financial Preferred Portfolio.
PGX	PowerShares Preferred Portfolio.
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio.
PHO	PowerShares Water Resources Portfolio.
PHYS	Sprott Physical Gold Trust.
PID	PowerShares International Dividend Achievers Portfolio.
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio.
PIN	PowerShares India Portfolio.
PJP	Powershares Dynamic Pharmaceuticals Portfolio.
PLW	PowerShares 1–30 Laddered Treasury Portfolio.
PPH	Market Vectors Pharmaceutical ETF.
PPLT	ETFS Platinum Trust.
PRF	Powershares FTSE RAFI US 1000 Portfolio.
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio.
PSLV	Sprott Physical Silver Trust.
PSP	PowerShares Global Listed Private Equity Portfolio.
PSQ	ProShares Short QQQ.
PVI	PowerShares VRDO Tax Free Weekly Portfolio.
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio.
PZA	PowerShares Insured National Municipal Bond Portfolio.
QQQ	Powershares QQQ Trust Series 1.
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund.
REMX	Market Vectors Rare Earth/Strategic Metals ETF.
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund.
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF.
RJA	ELEMENTS Linked to the Rogers International Commodity Index—Agri Tot Return.
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return.
RJN	ELEMENTS Linked to the Rogers International Commodity Index—Energy To Return.
RJZ	ELEMENTS Linked to the Rogers International Commodity Index—Metals Tot Return.
RPG	Guggenheim S&P 500 Pure Growth ETF.
RSP	Guggenheim S&P 500 Equal Weight ETF.
RSX	Market Vectors Russia ETF.
RTH	Market Vectors Retail ETF.
RWM	ProShares Short Russell2000.
RWO	SPDR Dow Jones Global Real Estate ETF.
RWR	SPDR Dow Jones REIT ETF.
RWX	SPDR Dow Jones International Real Estate ETF.
RYH	Guggenheim S&P 500 Equal Weight Healthcare ETF.
SAGG	Direxion Daily Total Bond Market Bear 1x Shares.
SCHA	Schwab US Small-Cap ETF.
SCHB	Schwab US Broad Market ETF.
SCHD	Schwab US Dividend Equity ETF.
SCHE	Schwab Emerging Markets Equity ETF.
SCHF	Schwab International Equity ETF.
SCHG	Schwab U.S. Large-Cap Growth ETF.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
SCHH	Schwab U.S. REIT ETF.
SCHM	Schwab U.S. Mid-Cap ETF.
SCHO	Schwab Short-Term U.S. Treasury ETF.
SCHP	Schwab U.S. TIPs ETF.
SCHR	Schwab Intermediate-Term U.S. Treasury ETF.
SCHV	Schwab U.S. Large-Cap Value ETF.
SCHX	Schwab US Large-Cap ETF.
SCHZ	Schwab U.S. Aggregate Bond ETF.
SCPB	SPDR Barclays Capital Short Term Corporate Bond ETF.
SCZ	iShares MSCI EAFE Small Cap Index Fund.
SDY	SPDR S&P Dividend ETF.
SEF	ProShares Short Financials.
SGG	iPath Dow Jones-UBS Sugar Subindex Total Return ETN.
SGOL	ETFS Gold Trust.
SH	ProShares Short S&P500.
SHM	SPDR Nuveen Barclays Capital Short Term Municipal Bond ETF.
SHV	iShares Barclays Short Treasury Bond Fund.
SHY	iShares Barclays 1–3 Year Treasury Bond Fund.
SIL	Global X Silver Miners ETF.
SIVR	ETFS Physical Silver Shares.
SJB	ProShares Short High Yield.
SJNK	SPDR Barclays Capital Short Term High Yield Bond ETF.
SLV	iShares Silver Trust.
SLX	Market Vectors Steel Index Fund.
SMH	Market Vectors Semiconductor ETF.
SOXX	iShares PHLX SOX Semiconductor Sector Index Fund.
SPLV	PowerShares S&P 500 Low Volatility Portfolio.
SPY	SPDR S&P 500 ETF Trust.
SPYG	SPDR S&P 500 Growth ETF.
SPYV	SPDR S&P 500 Value ETF.
STIP	iShares Barclays 0–5 Year TIPS Bond Fund.
STPP	iPath US Treasury Steepener ETN.
STPZ	PIMCO 1–5 Year US TIPS Index Fund.
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund.
SVXY	ProShares Short VIX Short-Term Futures ETF.
TAN	Guggenheim Solar ETF.
TBF	ProShares Short 20+ Year Treasury.
TBX	ProShares Short 7–10 Treasury.
TFI	SPDR Nuveen Barclays Capital Municipal Bond ETF.
THD	iShares MSCI Thailand Index Fund.
TIP	iShares Barclays TIPS Bond Fund.
TLH	iShares Barclays 10–20 Year Treasury Bond Fund.
TLT	iShares Barclays 20+ Year Treasury Bond Fund.
TUR	iShares MSCI Turkey Index Fund.
UDN	PowerShares DB US Dollar Index Bearish Fund.
UGA	United States Gasoline Fund LP.
UNG	United States Natural Gas Fund LP.
URA	Global X Uranium ETF.
USCI	United States Commodity Index Fund.
USL	United States 12 Month Oil Fund LP.
USO	United States Oil Fund LP.
UUP	PowerShares DB US Dollar Index Bullish Fund.
VAW	Vanguard Materials ETF.
VB	Vanguard Small-Cap ETF.
VBK	Vanguard Small-Cap Growth ETF.
VBR	Vanguard Small-Cap Value ETF.
VCIT	Vanguard Intermediate-Term Corporate Bond ETF.
VCLT	Vanguard Long-Term Corporate Bond ETF.
VCR	Vanguard Consumer Discretionary ETF.
VCSH	Vanguard Short-Term Corporate Bond ETF.
VDC	Vanguard Consumer Staples ETF.
VDE	Vanguard Energy ETF.
VEA	Vanguard MSCI EAFE ETF.
VEU	Vanguard FTSE All-World ex-US ETF.
VFH	Vanguard Financials ETF.
VGK	Vanguard MSCI European ETF.
VGT	Vanguard Information Technology ETF.
VHT	Vanguard Health Care ETF.
VIG	Vanguard Dividend Appreciation ETF.
VIIX	VelocityShares VIX Short Term ETN.
VIOO	Vanguard S&P Small-Cap 600 ETF.
VIS	Vanguard Industrials ETF.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
VIXM	ProShares VIX Mid-Term Futures ETF.
VIXY	ProShares VIX Short-Term Futures ETF.
VMBS	Vanguard Mortgage-Backed Securities ETF.
VNM	Market Vectors Vietnam ETF.
VNQ	Vanguard REIT ETF.
VO	Vanguard Mid-Cap ETF.
VOE	Vanguard Mid-Cap Value Index Fund/Closed-end.
VONE	Vanguard Russell 1000.
VONG	Vanguard Russell 1000 Growth ETF.
VONV	Vanguard Russell 1000 Value.
VOO	Vanguard S&P 500 ETF.
VOOG	Vanguard S&P 500 Growth ETF.
VOOV	Vanguard S&P 500 Value ETF.
VOT	Vanguard Mid-Cap Growth Index Fund/Closed-end.
VOX	Vanguard Telecommunication Services ETF.
VPL	Vanguard MSCI Pacific ETF.
VPU	Vanguard Utilities ETF.
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index.
VSS	Vanguard FTSE All World ex-US Small-Cap ETF.
VT	Vanguard Total World Stock Index Fund ETF.
VTHR	Vanguard Russell 3000.
VTI	Vanguard Total Stock Market ETF.
VTV	Vanguard Value ETF.
VTWG	Vanguard Russell 2000 Growth.
VTWO	Vanguard Russell 2000.
VTWV	Vanguard Russell 2000 Value.
VUG	Vanguard Growth ETF.
VV	Vanguard Large-Cap ETF.
VWO	Vanguard MSCI Emerging Markets ETF.
VXAA	ETRACS 1-Month S&P 500 VIX Futures ETN.
VXEE	ETRACS 5-Month S&P 500 VIX Futures ETN.
VXF	Vanguard Extended Market ETF.
VXUS	Vanguard Total International Stock ETF.
VXX	iPATH S&P 500 VIX Short-Term Futures ETN.
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN.
VYM	Vanguard High Dividend Yield ETF.
VZZB	iPath Long Enhanced S&P 500 VIX Mid-Term FuturesTM ETN II.
WDTI	WisdomTree Managed Futures Strategy Fund.
WIP	SPDR DB International Government Inflation-Protected Bond ETF.
XBI	SPDR S&P Biotech ETF.
XES	SPDR S&P Oil & Gas Equipment & Services ETF.
XHB	SPDR S&P Homebuilders ETF.
XIV	VelocityShares Daily Inverse VIX Short Term ETN.
XLB	Materials Select Sector SPDR Fund.
XLE	Energy Select Sector SPDR Fund.
XLF	Financial Select Sector SPDR Fund.
XLG	Guggenheim Russell Top 50 ETF.
XLI	Industrial Select Sector SPDR Fund.
XLK	Technology Select Sector SPDR Fund.
XLP	Consumer Staples Select Sector SPDR Fund.
XLU	Utilities Select Sector SPDR Fund.
XLV	Health Care Select Sector SPDR Fund.
XLY	Consumer Discretionary Select Sector SPDR Fund.
XME	SPDR S&P Metals & Mining ETF.
XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
XPH	SPDR S&P Pharmaceuticals ETF.
XRT	SPDR S&P Retail ETF.
XSD	SPDR S&P Semiconductor ETF.
XXV	iPath Inverse S&P 500 VIX Short-Term Futures ETN.
ZROZ	PIMCO 25+ Year Zero Coupon US Treasury Index Fund.

Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections H(E)—(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. Summary Statistics

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category
   a. Tier 1 non-ETP issues > $3.00
   b. Tier 1 non-ETP issues >= $0.75 and <= $3.00

c. Tier 1 non-ETP issues < $0.75
d. Tier 1 non-leveraged ETPs in each of above categories
e. Tier 1 leveraged ETPs in each of above categories
f. Tier 2 non-ETPs in each of above categories
g. Tier 2 non-leveraged ETPs in each of above categories
h. Tier 2 leveraged ETPs in each of above categories
2. Partition by time of day
a. Opening (prior to 9:45 a.m. ET)
b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
c. Closing (after 3:35 p.m. ET)
d. Within five minutes of a Trading Pause re-open or IPO open
3. Track reasons for entering a Limit State, such as:
a. Liquidity gap—price reverts from a Limit State Quotation and returns to trading within the Price Bands
b. Broken trades
c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. Raw Data (All Participants, Except A–E, Which Are for the Primary Listing Exchanges Only)

A. Record of every Straddle State
1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
2. Pipe delimited with field names as first record.

B. Record of every Price Band
1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
2. Pipe delimited with field names as first record

C. Record of every Limit State
1. Ticker, date, time entered, time exited, flag for halt
2. Pipe delimited with field names as first record

D. Record of every Trading Pause or halt
1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
2. Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses
1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
2. Pipe delimited with field name as first record

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.
1. Market/marketable sell orders arrivals and executions
a. Count
b. Shares
c. Shares executed
2. Market/marketable buy orders arrivals and executions
a. Count
b. Shares
c. Shares executed
3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus $0.05
8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus $0.05
9. Count and volume of (3–8) for cancels
10. Include: Ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. At least two months prior to the end of the Pilot Period, all Participants shall provide to the SEC assessments relating to the impact of the Plan and calibration of the Percentage Parameters as follows:

A. Assess the statistical and economic impact on liquidity of approaching Price Bands.

B. Assess the statistical and economic impact of the Price Bands on erroneous trades.

C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.

D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.

E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)

F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

[FR Doc. 2013–05635 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 14, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 7, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–05762 Filed 3–8–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69060]

Order Granting a Temporary Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 From the Filing Deadline Specified in Rule 613(a)(1) of the Exchange Act

March 7, 2013.

Rule 613(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] requires the Financial Industry Regulatory Authority, Inc. ("FINRA") and the seventeen registered national securities exchanges (collectively, the "SROs") to "jointly file on or before 270

[1] 17 CFR 242.613(a)(1).

days from the date of publication of the Adopting Release [for Rule 613 of the Exchange Act [2]] in the **Federal Register** a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by [the rule]." The Adopting Release for Rule 613 was published in the **Federal Register** on August 1, 2012,[3] thus requiring the national market system plan (the "NMS plan") to be filed on or before April 28, 2013.[4] On February 8, 2013, the Commission received a request from the SROs, pursuant to Rule 0–12 under the Exchange Act,[5] that the Securities and Exchange Commission ("Commission") grant a temporary exemption under Section 36 of the Exchange Act,[6] from the deadline specified in Rule 613(a)(1) of the Exchange Act [7] for submitting the NMS plan to the Commission.[8]

In the Request Letter, the SROs noted that Rule 613 requires that they include in the NMS plan "cost estimates for the proposed solution, and a discussion of the costs and benefits of alternative solutions considered but not proposed."[9] They also noted that Rule 613 requires that the NMS plan include a discussion of "[t]he process by which the [SROs] solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the [SROs] took such views into account in preparing the [NMS plan]."[10]

In order to satisfy these requirements, the SROs believe that conducting a request for proposal ("RFP") process is necessary prior to filing an NMS plan. The SROs believe that such a process will ensure that potential alternative solutions for creating the consolidated audit trail can be presented to the SROs for their consideration, and will provide the SROs with information necessary to prepare a detailed cost/benefit analysis as required by Rule 613. To ensure that the RFP process is effective, the SROs believe the concepts that will be contained in the RFP should be subject to public comment before the document is finalized and formally published. The SROs believe that public comment will ensure that the RFP addresses areas of concerns to the industry and the SROs, and will also provide potential bidders with information on the RFP prior to its formal publication. To this end, the SROs published an RFP concept document on December 5, 2012, and requested public feedback by January 18, 2013.[11]

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself. The SROs believe that such a comment process is necessary in order to gather information needed to perform an effective cost/benefit analysis, including the estimated costs to broker-dealers and other market participants of building the consolidated audit trail in accord with the proposed solution, as well as to meaningfully assess and respond to the comments and draft the final NMS plan for submission to the Commission.

In the Request Letter, the SROs provided the following estimated timeline, which is based on their current expectation for conducting the RFP process and drafting the NMS plan:

- December 5, 2012: The SROs published an RFP concept document for comment
- January 18, 2013: Deadline to submit comments on the RFP concept document made publicly available (i.e., a 45-day comment period)
- February 2013: The SROs will publish the final RFP for bids
- March 2013: The SROs will solicit public comment on certain portions of the draft NMS plan that are not dependent on the RFP process and can benefit from public comment
- April 2013: Deadline for submitting bids in response to the RFP
- July 2013: The SROs will select a proposed solution after reviewing and evaluating the RFP bids
- August 2013: The SROs will solicit public comment on other specific portions of the proposed NMS plan that the SROs believe can benefit from public comment and that incorporate the RFP process and the proposed solution, including soliciting estimates on industry costs
- October 2013: Comments must be submitted on the proposed solution (i.e., a 60-day comment period)
- December 6, 2013: The SROs file the proposed NMS plan with the Commission

For the reasons set forth above, the SROs stated that a temporary exemption from the filing deadline until December 6, 2013 is "necessary to allow the SROs to conduct the thoughtful and comprehensive analysis this important regulatory initiative deserves."[12] The SROs also stated their belief that "the timeline outlined above will lead to a significantly better and more informed process and, as a result, the proposed solution will be the result of a more meaningful and careful analysis."[13]

Section 36 of the Exchange Act [14] authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

After considering the SROs' proposed process for developing the NMS plan, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant the SROs a temporary exemption from the deadline for filing the NMS plan contained in Rule 613(a)(1)[15] until December 6, 2013. The Commission understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things, including the

[2] 17 CFR 242.613.

[3] Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) ("Adopting Release").

[4] April 28, 2013, is a Sunday. Therefore, in accordance with Rule 160(a) of the Commission Rules of Practice, the deadline for filing the NMS plan is Monday, April 29, 2013. The SROs, however, had established an earlier deadline for the filing of the NMS plan of Friday, April 26, 2013.

[5] 17 CFR 240.0–12.

[6] 15 U.S.C. 78mm(a)(1).

[7] 17 CFR 242.613(a)(1).

[8] *See* Letter from Robert L.D. Colby, Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2013 (the "Request Letter").

[9] *See* Request Letter (quoting Adopting Release, *supra* 3, at 45725).

[10] *See* Request Letter (quoting 17 CFR 242.613(a)(1)(xi)).

[11] *See* Request Letter.

[12] *See* Request Letter.

[13] *Id.*

[14] 15 U.S.C. 78mm.

[15] As noted above, the current deadline for submitting the NMS plan is April 29, 2013. This deadline is calculated pursuant to Rule 613(a)(1) which requires the NMS plan to be filed 270 days from the date of publication of the Adopting Release in the **Federal Register**. *See* note 4, *supra*.

methods for reporting the required data; a detailed estimate of the costs to plan sponsors and to members of the plan sponsors of creating, implementing, and maintaining the consolidated audit trail (including issues relating to funding of the consolidated audit trail); an analysis of the impact on competition, efficiency and capital formation of creating, implementing and maintaining the NMS plan; and a discussion of any reasonable alternative approaches that the plan sponsors considered including a description of any such alternative approach, the relative advantages and disadvantages of each such alternative, including an assessment of the alternative's costs and benefits, and the basis upon which the plan sponsors selected the approach in the NMS Plan submitted.[16]

Additionally, given that the planned RFP process as described in the Request Letter is expected to include multiple solicitations for public comment, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to provide the SROs with additional time. This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission. In granting the SROs' request, the Commission expects the SROs to work diligently to adhere to the milestones specified by the SROs in the Request Letter. The Commission also expects the SROs to utilize the additional time to prepare a detailed and complete NMS plan for the Commission and the public to consider.

Accordingly, *it is hereby ordered*, pursuant to Section 36 of the Exchange Act,[17] that the SROs are temporarily exempted from the deadline for submitting the NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository contained in Rule 613(a)(1) until December 6, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05634 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* Rule 613(a)(1).

[17] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69038; File No. SR–BATS–2013–016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify the BATS Options Market Maker Obligation Rule

March 5, 2013.

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 March 1, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market ("BATS Options") to amend Rule 22.6(d) in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan").[5] The Exchange is also proposing to amend Rule 22.6(d) to suspend the obligation of market makers registered with BATS ("Market Makers") to enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security (collectively, a "Trading Halt").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently requires Market Makers to enter continuous bids and offers for the options series to which it is registered in at least 75% of the options series in which the Market Maker is registered. The purpose of this proposed rule change is to amend BATS Rule 22.6(d) to suspend a Market Maker's continuous quoting obligations when the underlying security is subject to a "Limit State" or "Straddle State" as defined Limit in the Up-Limit Down Plan and during a Trading Halt.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. While, in theory, the liquidity provided by requiring Market Makers to continue to quote during a Limit or Straddle State could help to stabilize a volatile market, without a reliable benchmark for pricing an option, Market Makers would likely respond to the uncertainty by entering very wide

quotes, which would not provide any additional stability and could potentially lead to additional uncertainty. As such, the Exchange is proposing to eliminate the continuous quoting requirements of Rule 22.6(d) when the underlying security is in a Limit State or Straddle state. Specifically, the Exchange is proposing to exclude the time during which the underlying security is in a Limit State or Straddle state when evaluating whether a Market Maker has met the continuous quoting requirements of Rule 22.6(d). The Exchange believes that this relief will help to maintain a fair and efficient marketplace for the execution of options.

The Exchange is also proposing to amend Rule 22.6(d) to provide an exception to the continuous quoting requirements for Market Makers during a Trading Halt. Currently, the Exchange does not provide an exemption for its requirement that a Market Maker enter continuous bids and offers for the options series to which it is registered. Much like when an underlying security is in a Limit State or a Straddle State, there is no reliable price during a Trading Halt to serve as a benchmark for the price of the related option because the only available price is the last trade prior to the Trading Halt. Based on this concern and for the same reasons discussed above, the Exchange is proposing to exempt Market Makers from existing continuous quoting requirements during a Trading Halt.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest. The Exchange believes that exempting Market Makers from the continuous quoting requirements on BATS Options when the underlying security is in a Limit State or Straddle State or a Trading Halt will help to prevent executions that might occur at prices that have not been reliably formed. Further, the proposed changes will allow Market Makers to enter orders only where the Market Maker is confident in the price of the option, rather than on a continuous basis in all series in which the Market Maker is registered, which the Exchange believes will help to minimize uncertainty during a volatile market. The Exchange also believes that these changes will help to incentivize participants registered with BATS as Market Makers to continue to act as Market Makers, rather than potentially causing Market Makers to de-register. The Exchange also believes that this change will help to protect all investors from executions at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that other options exchanges are proposing to suspend a market maker's quoting obligations when the underlying security is subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BATS–2013–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2013–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2013–016 and should be submitted on or before April 2, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-05571 Filed 3-11-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69044; File No. SR-ICEEU-2013-03]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Clearing of Foreign Exchange Transactions

March 5, 2013.

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 February 28, 2013, ICE Clear Europe Limited ("ICE Clear Europe") 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 primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to implement new Part 17 of ICE Clear Europe's Rules, new FX Procedures, and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange ("foreign exchange" or "FX") transactions, initially non-deliverable FX forward transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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 III below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICE Clear Europe submits new Part 17 of its Rules, new FX Procedures and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange transactions, initially non-deliverable FX forward transactions. The other proposed changes in the Rules reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules.

The amendments adopt a new Part 17 of the Rules, which provides for the basic terms and conditions on which foreign exchange transactions will be cleared. Initially, ICE Clear Europe proposes to clear a series of contracts that are non-deliverable forward ("NDF") transactions in the following currency pairs: USD/Brazilian Real, USD/Korean Won, USD/China Yuan, USD/Indian Rupee, USD/Indonesian Rupiah, USD/Chilean Peso and USD/Russian Ruble. The contract specifications for the cleared NDF transactions are set forth in the new FX Procedures and related OTC FX Product Guide and Published Terms.

The amendments also provide for the establishment of a separate guaranty fund for FX transactions (including a separate assessment right applicable to Clearing Members that clear FX transactions ("FX Clearing Members")), to be applied to losses resulting from the default of an FX Clearing Member. ICE Clear Europe will also have a limited right of assessment, as set forth in Part 11 of the ICE Clear Europe Rules, against non-defaulting FX Clearing Members in an amount up to two times their required FX guaranty fund contribution as in effect prior to the relevant default.

Specifically, Rule 1701 sets forth definitions related to the clearing of FX Contracts. Rule 1702 addresses the determination of settlement prices for FX Contracts. Rule 1703 provides for the payment of interest on mark-to-market margin for FX Contracts. Rule 1704 provides for the separate treatment of reference currency buyer and seller positions for each category of proprietary or customer account. New Rule 1705 addresses the settlement of FX contracts. Rules 1706 and 1707 establish an FX default committee to address defaults by FX Clearing Members and default related policies and procedures. Rule 1708 addresses permitted use of certain FX-related data. Rule 1709 establishes certain requirements for guarantors of FX Clearing Members. Rule 1710 sets out procedures for the termination of FX clearing membership.

Conforming and related amendments are also proposed to other parts of the ICE Clear Europe Rules, including changes to definitions in Part 1 of the ICE Clear Europe Rules. Part 2 of the Rules has been amended to address the inclusion of FX Clearing Members (including provisions relating to the termination of FX Clearing Member status). Proposed amendments to Parts 3 and 4 of the Rules contain various conforming and clarifying changes, and Rule 406 contains special rules relating to the netting of FX Contracts. Part 5 of the Rules has been amended to address margin for FX Contracts. Part 9 of the Rules has been revised to address defaults of FX Clearing Members and close-out of FX Contracts on default, in addition to various clarifying changes. Part 11 of the Rules has been amended to reflect the creation of a separate FX guaranty fund and to provide for contributions to and use of the FX guaranty fund in various default scenarios. Revised Part 11 also addresses ICE Clear Europe's power of assessment of additional FX guaranty fund contributions from FX Clearing Members.

ICE Clear Europe is also adopting a set of FX Procedures, which address certain additional issues for FX Contracts and FX Clearing Members, including (i) additional membership standards for FX Clearing Members (beyond those set out generally in the Rules), (ii) procedures for submission and acceptance of FX Contracts for clearing, (iii) provision of FX Contract pricing data by FX Clearing Members to ICE Clear Europe, (iv) settlement procedures for FX Contracts, (v) determination of market prices for FX Contracts and interest on mark-to-market margin and (vi) FX default committee procedures. The contract specifications and terms for FX Contracts are set out in the FX Procedures together with the OTC FX Product Guide and Published Terms for FX Contracts.

As part of the rule change, ICE Clear Europe will establish a separate FX Risk Committee with up to 15 members, including up to 10 representatives from clearing members of ICE Clear Europe.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the

[8] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

Act [4] and the regulations thereunder applicable to it. The rule amendments will provide for clearing of an additional class of contract and thereby promote the prompt and accurate clearance of transactions and the protection of investors and the public interests. The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. In particular, ICE Clear Europe notes that it has established three separate mutualized guaranty funds, one for energy products, one for credit default swaps, and one for foreign exchange swaps.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed change have been solicited, but no comments have been received to date. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2013–03 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–ICEEU–2013–03. 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 ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings*.

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–ICEEU–2013–03 and should be submitted on or before April 2, 2013.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[6] and the rules and regulations thereunder applicable to ICE Clear Europe. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[7] which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The proposed rule change is designed to permit ICE Clear Europe to clear promptly and accurately foreign exchange transactions, beginning with non-deliverable FX forward transactions.

In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing in the **Federal Register** because the proposed rule change implements new rules, procedures, and other provisions related to the clearing of products that are swaps subject to regulation by the Commodity Futures Trading Commission ("CFTC").[9] ICE Clear Europe has represented that the proposed rule change does not affect ICE Clear Europe's security-based swap clearing activities. The proposed rule and procedure changes have been submitted to the CFTC.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ICEEU–2013–03) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05572 Filed 3–11–13; 8:45 am]

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[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(2).

[9] *See e.g.*, Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207, 48254–48255, 48349 (Aug. 13, 2012) (Joint Final Rule with the CFTC) defining non-deliverable forward contracts involving foreign exchange as swaps under Section 1a(47) of the Commodity Exchange Act.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69043; File No. SR–EDGA–2013–09]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

March 5, 2013.

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 February 28, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's default [4] rates for securities priced below $1.00 that add, remove or route liquidity are listed on the Exchange's fee schedule. Under "Liquidity Flags and Associated Fees," the Exchange proposes to modify the title of the existing column from "Fee/(Rebate)" to "Fee/(Rebate) Securities at or above $1.00." The Exchanges also proposes to insert a column titled "Fee/(Rebate) Securities below $1.00" to list the rate that corresponds to each liquidity flag for securities priced below $1.00 in order to increase the transparency of the Exchange's fee schedule, as described in greater detail below. In addition, the Exchange proposes to delete the text under "Liquidity Flags and Associated Fees" that states "unless otherwise noted, the following rebates and fees apply to orders in securities priced $1 and over" because this text is no longer accurate given the Exchange's proposed changes.

The Exchange's fee schedule states that it assesses no charge as the default rate for Members' orders that add liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to list "Free" in the column "Fee/(Rebate) Securities below $1.00" for Flags B, V, Y, 3, 4, PA, and RP. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags B, V, Y, 3, 4, PA, and RP for securities priced below $1.00 that add liquidity to the Exchange.

The Exchange's fee schedule states that it assesses no charge as the default rate for Members' orders that remove liquidity in securities priced below $1.00 provided the Member satisfies the volume tier requirements in Footnote 1 of the fee schedule.[5] The Exchange proposes to amend its fee schedule to list "Free" in the column "Fee/(Rebate) Securities below $1.00" for Flags N, W, 6, BB, CR, PR, PT, and XR. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags N, W, 6, BB, CR, PR, PT, and XR for securities priced below $1.00 that remove liquidity from the Exchange.

The Exchange's fee schedule states that it charges Members the default rate of 0.30% of the dollar value of the transaction for orders that route to away trading destinations in securities priced below $1.00.[6] The Exchange proposes to amend its fee schedule to list the rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, MT, PX, RR, RT, RX, and SW. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, MT, PX, RR, RT, RX, and SW for securities priced below $1.00 that route to away trading destinations and remove liquidity. In addition, the Exchange proposes to amend the title of the routing liquidity category to "Routing and Removing Liquidity" in order to increase the transparency of the Exchange's fee schedule. Regarding the flags' descriptions contained on the fee schedule, the Exchange proposes to delete references to removing liquidity for Flags D, G, J, L, U, 2, and RR because the Exchange's references to "route" imply that the flags route and remove liquidity. In addition, the Exchange proposes to make conforming changes to the descriptions of Flags U and PX in order to make the descriptions for all flags that route and remove liquidity consistent.

The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to some away trading destinations [7] and add liquidity in

[4] Where "default" refers to the standard rate that the Exchange charges its Members for orders that add, remove, or route liquidity from the Exchange absent Members qualifying for additional volume tiered pricing. The Exchange maintains default rates for securities at or above $1.00 and securities priced below $1.00 for orders that add, remove, and route liquidity. The Exchange notes that a Member may qualify for a higher rebate if the Member satisfies the volume tier requirements outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule for securities priced at or above $1.00. The Exchange notes that the volume from securities priced below $1.00 contributes toward volume tiered requirements for securities priced at or above $1.00 as outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule. Unless otherwise stated in Footnotes 1 and 2 of the fee schedule, the Exchange does not offer volume tiered pricing for securities priced below $1.00.

[5] Footnote 1 of the fee schedule states that all removal rates on EDGA are contingent on the attributed Member Participant Identifier ("MPID") adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum will be charged $0.0030 per share for removing liquidity from EDGA for securities priced $1.00 and over and 0.20% of dollar value for securities priced less than $1.00.

[6] This fee is consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities priced below $1.00.

[7] The Exchange currently assess no charge for Members' orders that route to the following away trading destinations and add liquidity: NYSE Arca, Inc. ("NYSE Arca"), New York Stock Exchange LLC ("NYSE"), The NASDAQ Stock Market LLC ("NASDAQ"), LavaFlow ECN, NASDAQ OMX BX, Inc.'s ("NASDAQ BX"), CBOE Stock Exchange, Inc.

Continued

securities priced below $1.00. The Exchange currently assesses no charge to Members for orders that route to these away trading destinations and add liquidity because these away trading destinations pass through no charge to Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker dealer, for adding liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to assess no charge for Flags A, F, M, P, 8, 9, 10, RB, RS, RW, RY, and RZ. The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags A, F, M, P, 8, 9, 10, RB, RS, RW, RY, and RZ for securities priced below $1.00 that route to away trading destinations and add liquidity. Regarding the flags' descriptions contained on the fee schedule, the Exchange proposes to make conforming changes to the descriptions of Flags M and P in order to make the descriptions for all flags that route to these away trading destinations and add liquidity consistent and to revise Flag 8 to replace the entity formerly known as NYSE Amex with NYSE MKT LLC.

The Exchange's fee schedule states that it assesses no charge as the default rate for Members' orders that that yield Flag OO in securities priced below $1.00, which represents Members' orders that are matched at the "Direct Edge Opening" and either add or remove liquidity. The Exchange proposes to amend its fee schedule to list "Free" for Flag OO in the column "Fee/(Rebate) Securities below $1.00." The Exchange notes that this proposal does not modify the current rate it charges its Members for orders that yield Flag OO for securities priced below $1.00 that are matched at the Direct Edge Opening.

The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that yield Flag RC in securities priced below $1.00. The Exchange currently assesses no charge for Members' orders that yield Flag RC, which route to the National Stock Exchange, Inc. (the "NSX") and add liquidity. The Exchange proposes to amend its fee schedule to assess no charge for Flag RC. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag RC for securities priced below $1.00 that route to the NSX and add liquidity.

As provided in Footnote 3 of the fee schedule, the Exchange currently assesses a charge of 0.10% of the dollar value of the transaction for Members' orders that yield Flag C, which route to NASDAQ BX and remove liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to list a charge of 0.10% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flag C. The Exchange notes that this proposal does not modify the current rate it charges its Members for orders that yield Flag C for securities priced below $1.00 that route to NASDAQ BX and add liquidity. In addition, the Exchange proposes to delete "removes liquidity" in Flag C's description because the Exchange's reference to "routed" implies that Flag C routes and removes liquidity. The Exchange proposes to delete the text of Footnote 3 and its associated annotations on the default rate for routing and removing liquidity at the top of the fee schedule in addition to Flags C, D, J, L, and 2 on the [sic] because the Exchange proposes to list these rates in the column "Fee/(Rebate) Securities below $1.00" on the Exchange's fee schedule. The Exchange proposes to insert "intentionally omitted" in Footnote 3 in place of the deleted text.

The Exchange notes that Footnote 12 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. However, in practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY, which routes to BATS BYX and removes liquidity using routing strategies ROUC, ROUE, ROBY, ROBB or ROCO.[8] This rate represents a pass through of the rate that BATS BYX charges DE Route. Accordingly, the Exchange proposes to amend its fee schedule to assess a charge of 0.10% of the dollar value of the transaction for Flag BY. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag BY for securities priced below $1.00 that route to BATS BYX and remove liquidity using routing strategies ROUC, ROUE, ROBY, ROBB or ROCO. In addition, the Exchange proposes to delete the text of Footnote 12 and its associated annotation on Flag BY on the fee schedule because the Exchange proposes to list this rate in the column "Fee/(Rebate) Securities below $1.00." The Exchange proposes to insert "intentionally omitted" in Footnote 12 in place of the deleted text. In addition, the Exchange proposes to delete "removes liquidity" in Flag BY's description because the Exchange's reference to "routed" implies that Flag BY routes and removes liquidity.

Customer internalization generally occurs when one Member presents two orders to the Exchange from the same MPID separately, rather than in a paired manner, and the two orders inadvertently match with one another.[9] The Exchange's fee schedule states that it assesses the default rate of "Free" for Members' orders in securities priced below $1.00 that yield Flags 5, EA and ER, which are the flags associated with customer internalization. The Exchange proposes to amend its fee schedule to list "Free" in the column "Fee/(Rebate) Securities below $1.00" for Flags 5, EA and ER. The Exchange notes that this proposal does not modify the current rates charged for Members' orders that yield Flags 5, EA and ER. The Exchange also notes that the internalization fee is no more favorable than the prevailing maker/taker spread.[10] The Exchange notes that this proposed internalization fee will continue to discourage Members from engaging in potential wash sales.

The Exchange's fee schedule displays "Free" as the default rates for Members orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.10% of the dollar value of the transaction for securities priced below $1.00 for Flag HA, for Non-displayed Orders that add liquidity, and Flag HR, for Non-displayed Orders that remove liquidity, where Members satisfy the volume tier requirements outlined in Footnote 2 of the fee schedule. The Exchange proposes to amend its fee schedule to assess a charge of 0.10% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flags HA and HR. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flags HA and HR for securities priced below $1.00. In addition, the Exchange proposes to amend Footnote 2 of the fee

("CBSX"), BATS Y-Exchange, Inc. ("BATS BYX"), BATS Exchange, Inc. ("BATS BZX"), EDGX Exchange, Inc. ("EDGX"), NASDAQ OMX PSX, Inc. ("NASDAQ PSX"), and NYSE MKT LLC (formerly NYSE Amex).

[8] As defined in Exchange Rule 11.9(b)(3).

[9] Members are advised to consult Exchange Rule 12.2 regarding fictitious trading.

[10] *See* Securities Exchange Release No. 64393 (May 4, 2011), 76 FR 27370, 27372 (May 11, 2011) (SR–EDGA–2011–14), where the Exchange represented that it "will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread."

schedule to state that the Exchange will assess a charge of 0.30% of the dollar value of the transaction for Members' orders that yield Flags HA or HR in securities priced below $1.00 where Members do not satisfy the volume tier requirements. Therefore, the Exchange proposes to revise Footnote 2 to state, "Rates for Flags HA and HR are contingent upon Member adding or removing greater than 1,000,000 shares non-displayed (hidden) on a daily basis, measured monthly (yields Flags HA, HR, DM, DT and RP) or Member posting greater than 8,000,000 shares on a daily basis, measured monthly. For securities priced at or above $1.00, Members not meeting either minimum will be charged $0.0030 per share for Flags HA and HR. For securities priced below $1.00, Members not meeting either minimum will be charged 0.30% of the dollar value of the transaction."

The Exchange's fee schedule displays "Free" as the default rates for Members' orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.05% of the dollar value of the transaction for securities priced below $1.00 for Flag DM, for Non-displayed Orders that add liquidity using the Mid Point Discretionary ("MDO") [11] order type, and Flag DT, for Non-displayed Orders that remove liquidity using the MDO order type. The Exchange proposes to amend its fee schedule to assess a charge of 0.05% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flags DM and DT. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flags DM and DT for securities priced below $1.00.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that add liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that add liquidity, the Exchange proposes to list the default rate of "Free" to Flags B, V, Y, 3, 4, PA, and RP. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to not charge Members for orders that add liquidity in securities priced below $1.00 because it will incentivize Members to add liquidity to the Exchange. The Exchange also believes its proposal to assess no charge is equitable and reasonable because the Exchange incurs only nominal administrative, clearing, and other operating costs in executing these trades because of the low volume generated by securities priced below $1.00. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags B, V, Y, 3, 4, PA, and RP for securities priced below $1.00 that add liquidity from the Exchange. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that remove liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that remove liquidity, the Exchange proposes to list the default rate of "Free" next to Flags N, W, 6, BB, CR, PR, PT and XR. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to not charge Members for orders that remove liquidity in securities priced below $1.00 because it will incentivize Members to remove liquidity from the Exchange. The Exchange also believes its proposal to assess no charge is equitable and reasonable because the Exchange incurs only nominal administrative, clearing, and other operating costs in executing these trades because of the low volume generated by securities priced below $1.00. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags N, W, 6, BB, CR, PR, PT, and XR for securities priced below $1.00 that remove liquidity from the Exchange. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that route and remove liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that route and remove liquidity, the Exchange proposes to list the default rate of 0.30% of the dollar value of the transaction next to Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, MT, PX, RR, RT, RX, and SW. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to charge Members a default routing and removal rate of 0.30% of the dollar value of the transaction because these fees allow the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. The Exchange notes that routing through DE Route is voluntary. The Exchange also notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, MT, PX, RR, RT, RX, and SW for securities priced below $1.00 that route to away trading destinations and remove liquidity. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to pass through no charge for securities priced below $1.00 that route to some away trading destinations and add liquidity represents an equitable

[11] *See* Securities Exchange Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to these away trading destinations through DE Route. The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to these away trading destinations and add liquidity in securities priced below $1.00. Currently, the away trading destinations assess no charge to DE Route for orders that route to those destinations and add liquidity, and DE Route passes through no charge to the Exchange and the Exchange passes through no charge to its Members. [14] Therefore, since DE Route is not charged a fee by the away trading destination for routing orders that add liquidity to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to not charge its Members for orders that yield Flags A, F, M, P, 8, 9, 10, RB, RS, RW, RY, and RZ. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to some away trading destinations and add liquidity through DE Route. The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags A, F, M, P, 8, 9, 10, RB, RS, RW, RY, and RZ for securities priced below $1.00 that route to these away trading destinations and add liquidity. The Exchange notes that routing through DE Route is voluntary. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate of "Free" for securities priced below $1.00 that yield Flag OO represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Members will yield Flag OO when their orders are matched at the Direct Edge Opening on EDGA, whether the Member's order adds or removes liquidity. Because the Exchange is not a primary listing market, Flag OO generates low volume; therefore, the Exchange believes its proposal to assess no charge is equitable and reasonable given that the Exchange incurs only nominal administrative, clearing, and other operating costs in executing trades. The Exchange notes that its proposal does not modify the current rate it charges its Members for orders that yield Flag OO for securities priced below $1.00 that are matched at the Direct Edge Opening. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to assess no charge for securities priced below $1.00 that yield Flag RC represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Members will yield Flag RC when their orders route to the NSX and add liquidity. The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that yield Flag RC in securities priced below $1.00. The Exchange notes that the NSX offers a rebate to DE Route for Members' orders that yield Flag RC. The Exchange also notes that Flag RC generates low volume and nominal revenue to the Exchange. Therefore, the Exchange believes its proposal to assess no charge is equitable and reasonable because the rebate paid by NSX to DE Route and DE Route to the Exchange does not offset the administrative, clearing, and other operating costs associated with passing through the NSX rebate to Members. The Exchange notes that routing through DE Route is voluntary. The Exchange also notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag RC for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the rate of 0.10% of the dollar value of the transaction for Members' orders that yield Flag C for securities priced below $1.00 represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because it is a pass-through rate and the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NASDAQ BX through DE Route. Therefore, since DE Route is charged a fee by NASDAQ BX for routing orders that remove liquidity to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to charge its Members for orders that yield Flag C. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to NASDAQ BX and remove liquidity through DE Route. The Exchange notes that routing through DE Route is voluntary. The Exchange notes that its proposal does not modify the current rate it charges its Members for orders that yield Flag C for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above and deleting the text of Footnote 3 and its associated annotations on Flags C, D, J, L, and 2, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that this proposed

[14] NYSE Arca, NYSE, NYSE MKT LLC, BATS BZX, BATS BYX, CBSX, NASDAQ, NASDAQ BX, NASDAQ PSX, LavaFlow ECN, and EDGX assess customers no charge for orders that add liquidity on their respective exchanges in securities priced below $1.00. *See* NYSE Arca, NYSE Arca Trading Fees, *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees;* NYSE, NYSE Trading Fees, *http://usequities.nyx.com/markets/nyse-equities/trading-fees;* NYSE MKT LLC, NYSE MKT Trading Fees, *http://usequities.nyx.com/markets/nyse-mkt-equities/trading-fees;* BATS, BATS BZX and BYX Exchange Fee Schedules, *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf;* Chicago Board Options Exchange, CBOE Stock Exchange Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf;* NASDAQ, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2;* NASDAQ OMX BX, Inc., NASDAQ OMX BX Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing;* NASDAQ OMX PSX, Inc., NASDAQ OMX PSX Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing;* LavaFlow ECN, LavaFlow Pricing, *https://www.lavatrading.com/solutions/pricing.php;* and EDGX Exchange, Inc., EDGX Exchange Fee Schedule, *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to pass through 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY for securities priced below $1.00 represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BATS BYX through DE Route. The Exchange notes that Footnote 12 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. In practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY. Since DE Route is charged a fee by BATS BYX for routing orders that remove liquidity using routing strategies ROUC, ROUE, ROBY, ROBB or ROCO to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to charge its Members for orders that yield Flag BY. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BATS BYX and remove liquidity through DE Route. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag BY for securities priced below $1.00. The Exchange notes that routing through DE Route is voluntary. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above and deleting the text of Footnote 12 and its associated annotation on Flag BY, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate of "Free" for securities priced below $1.00 that yield Flags 5, EA and ER, which are associated with customer internalization, represents an equitable allocation of reasonable dues, fees and other charges. The Exchange's proposed rate for customer internalization is equitable because the rate is consistent with the Exchange's proposed maker/taker spread for securities priced below $1.00, where the default rate for adding liquidity is "Free" and the default rate for removing liquidity is "Free." Therefore, in each case, the proposed internalization fee of "Free" is no more favorable to the Member than the proposed maker/taker spread. Since the spread for customer internalization equals the Exchange's maker/taker spread, the Exchange's proposal continues to discourage Members from engaging in potential wash sales. The Exchange notes that its proposal does not modify the current rate it charges its Members for orders that yield Flags 5, EA or ER for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange believes that these proposed rates are non-discriminatory in that they apply uniformly to all Members.

The Exchange believes that its proposal to assess a charge of 0.10% of the dollar value of the transaction for Members' orders in securities priced below $1.00 that yield Flags HA and HR represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange's fee schedule displays "Free" as the default rates for Members orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.10% of the dollar value of the transaction for securities priced below $1.00 for Flags HA and HR. Because the Exchange assesses no charge as the default rate for Members' displayed orders that add or remove liquidity in securities priced below $1.00, the Exchange encourages displayed liquidity over non-displayed liquidity. The Exchange rewards Members for displaying liquidity because displayed liquidity is regarded as a public good that benefits investors and traders by providing greater price transparency and enhancing public price discovery, which ultimately leads to substantial reductions in transaction costs.[15] The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags HA or HR for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange believes that these proposed rates are non-discriminatory in that they apply uniformly to all Members.

The Exchange believes that its proposal to assess a rate of 0.05% of the dollar value of the transaction for Flags DM and DT in securities priced below $1.00 represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange's fee schedule displays "Free" as the default rates for Members orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.05% of the dollar value of the transaction for securities priced below $1.00 for Flags DM and DT. As with the rates for Flag DM and DT for securities priced above $1.00, the Exchange believes the same pricing justifications continue to apply: when the MDO adds liquidity like a displayed Pegged Order, the Exchange will assess no charge and Member's order yields Flags B, V, Y, 3, or 4; and where the MDO adds or removes liquidity, including upon entry, within the Member's specified discretionary (hidden) range, then it behaves like a Non-Displayed or Discretionary Order, which the Exchange proposes to assess a rate of 0.10% of the dollar value of the transaction (Flags HA and HR).[16] Therefore, the Exchange believes that its proposal to assess a charge of 0.05% of the dollar value of the transaction for Flags DM and DT is equitable because these rates represent a blended or hybrid rate between the rates the Exchange assesses for Pegged Orders (no charge) and the rates for Non-Displayed Orders that add or remove liquidity (fee of 0.10% of the dollar value of the transaction). In addition, the Exchange believes the rate for the Non-Displayed or discretionary aspect of the order is also equitable because it reflects the value the Exchange attributes to the MDO's contribution to price discovery, displayed depth of liquidity at the

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37516 (June 29, 2005); *see also* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10584 n. 53 (February 28, 2000) (SR–NYSE–99–48) (citing academic studies finding that the required display of customer limit orders, by providing greater price transparency and enhancing public price discovery, led to substantial reductions in transaction costs for both retail and institutional investors).

[16] *See* Securities Exchange Release No. 67300 (June 28, 2012), 77 FR 39783 (July 5, 2012) (SR–EDGA–2012–24).

national best bid/offer, and the added benefit that the Member makes the order transparent as compared to a traditional Non-Displayed Order, which is hidden on the order book. The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags DM or DT for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange believes that these proposed rates are non-discriminatory in that they apply uniformly to all Members.

As described in Section 3, the Exchange proposes to make conforming and non-substantive revisions to the fee schedule in general and the description of certain flags in particular in order to increase the level of transparency of the Exchange's fee schedule, promote consistent descriptions and applications, and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. In addition, as described in Section 3, the Exchange proposes to make conforming and non-substantive revisions to the fee schedule in general and the description of certain flags in particular in order to increase the level of transparency of the Exchange's fee schedule, promote consistent descriptions and applications, and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members.

Regarding Flags B, V, Y, 3, 4, PA, and RP, the Exchange believes that its proposal to amend its fee schedule to list the default rebate as "Free" in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that add liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags N, W, 6, BB, CR, PR, PT, and XR, the Exchange believes that its proposal to amend its fee schedule to list the default rate as "Free" in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that remove liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, MT, PX, RR, RT, RX, and SW, the Exchange believes that its proposal to amend its fee schedule to list the default rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that route and remove liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags A, F, M, P, 8, 9, 10, RB, RS, RW, RY, and RZ, the Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to these away trading destinations and add liquidity in securities priced below $1.00. The Exchange believes that its proposal to pass through no charge for securities priced below $1.00 that route to some away trading destinations and add liquidity will increase competition because it is comparable to the rates charged by the away trading destinations for adding liquidity. The Exchange believes its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rates for orders that route and add liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flag OO, the Exchange believes that its proposal to amend its fee schedule to list the default rate of "Free" in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rate for Flag OO and it applies uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flag RC, the Exchange's fee schedule does not clearly disclose its pricing for Members' orders yield Flag RC in securities priced below $1.00. The Exchange believes that its proposal to assess no charge will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flag RC and it applies uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flag C, the Exchange believes that its proposal to amend its fee schedule to list a charge of 0.10% of the dollar value of the transaction will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rate for Flag C and it applies uniformly to all Members that place orders in securities priced below $1.00. By charging a pass-through rate for securities priced below $1.00 that route to NASDAQ BX and remove liquidity, the Exchange will increase competition because it is comparable to the rates charged by NASDAQ BX for removing liquidity. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flag BY, the Exchange notes that Footnote 12 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. However, in practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY. The Exchange believes that its proposal to pass through a charge of 0.10% of the dollar value of the transaction for securities priced below $1.00 that route

to BATS BYX and remove liquidity will increase competition because it is comparable to the rates charged by BATS BYX for removing liquidity. The Exchange believes its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flag BY and it applies uniformly to all Members that place orders in securities priced below $1.00. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flags 5, EA and ER, the Exchange believes that its proposal to amend its fee schedule to list the default rate of "Free" in the column "Fee/(Rebate) Securities below $1.00" for customer internalization will not burden intermarket or intramarket competition as the proposed rate is no more favorable than the Exchange's prevailing maker/taker spread. In addition, the Exchange believes that its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify the current rates for Flags 5, EA and ER and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags HA and HR, the Exchange's fee schedule displays "Free" as the default rates for Members orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.10% of the dollar value of the transaction for securities priced below $1.00 for Flags HA and HR. The Exchange believes that its proposal to assess a charge of 0.10% of the dollar value of the transaction will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rates for Flags HA and HR and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags DM and DT, the Exchange's fee schedule displays "Free" as the default rates for Members orders that add or remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses a charge of 0.05% of the dollar value of the transaction for securities priced below $1.00 for Flags DM and DT. The Exchange believes that its proposal to assess a charge of 0.05% of the dollar value of the transaction will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flags DM and DT and they apply uniformly to all Members that place orders in securities priced below $1.00.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2013–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2013–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–09 and should be submitted on or before April 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05584 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 19b–4(f)(2)[sic].

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69042; File No. SR–EDGX–2013–10]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

March 5, 2013.

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 February 28, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Securities Priced Below $1.00

The Exchange's default [4] rates for securities priced below $1.00 that add, remove or route liquidity are listed on the Exchange's fee schedule. Under "Liquidity Flags and Associated Fees," the Exchange proposes to modify the title of the existing column from "Fee/(Rebate)" to "Fee/(Rebate) Securities at or above $1.00." The Exchanges also proposes to insert a column titled "Fee/(Rebate) Securities below $1.00" to list the rate that corresponds to each liquidity flag for securities priced below $1.00 in order to increase the transparency of the Exchange's fee schedule, as described in greater detail below. In addition, the Exchange proposes to delete the text under "Liquidity Flags and Associated Fees" that states "unless otherwise noted, the following rebates and fees apply to orders in securities priced $1 and over" because this text is no longer accurate given the Exchange's proposed changes.

The Exchange's fee schedule states that it offers Members the default rebate of $0.00003 per share for orders that add liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to list the rebate of $0.00003 in the column "Fee/(Rebate) Securities below $1.00" for Flags B, V, Y, 3, 4, HA, MM, RP, and ZA. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags B, V, Y, 3, 4, HA, MM, RP, and ZA for securities priced below $1.00 that add liquidity to the Exchange.

The Exchange's fee schedule states that it charges Members the default rate of 0.30% of the dollar value of the transaction for orders that remove liquidity in securities priced below $1.00.[5] The Exchange proposes to amend its fee schedule to list the rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flags N, W, 6, BB, MT, PI, PR, and ZR. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags N, W, 6, BB, MT, PI, PR, and ZR for securities priced below $1.00 that remove liquidity from the Exchange.

The Exchange's fee schedule states that it charges Members the default rate of 0.30% of the dollar value of the transaction for orders that route to away trading destinations in securities priced below $1.00. The Exchange proposes to amend its fee schedule to list the rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, RQ, RR, RT, RX, and SW. The Exchange notes that this proposal does not modify the current rates it charges its Members for orders that yield Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, RQ, RR, RT, RX, and SW for securities priced below $1.00 that route to away trading destinations and remove liquidity. In addition, the Exchange proposes to amend the title of the routing liquidity category to "Routing and Removing Liquidity" in order to increase the transparency of the Exchange's fee schedule. Regarding the flags' descriptions contained on the fee schedule, the Exchange proposes to delete references to removing liquidity for Flags D, G, J, L, U, 2, RR, RT and RX because the Exchange's references to "route" imply that the flags route and remove liquidity. In addition, the Exchange proposes to make conforming changes to the description of Flag U in order to make the descriptions for all flags that route and remove liquidity consistent.

The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to some away trading destinations [6] and add liquidity in securities priced below $1.00. The Exchange currently assesses no charge to Members for orders that route to these away trading destinations and add liquidity because these away trading destinations pass through no charge to Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker dealer, for adding liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to assess no charge for Flags A, F, M, 8, 9, 10, RA, RB, RS, RW, RY, and RZ. The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags A, F, M, 8, 9, 10, RA, RB, RS, RW, RY, and RZ for securities priced below $1.00 that route to away trading destinations and add liquidity. In addition, the Exchange proposes to make conforming changes to Flag M's description in order to make the descriptions for all flags that route to these away trading destinations and add liquidity consistent and to revise Flag 8 to replace the entity formerly known as NYSE Amex with NYSE MKT LLC.

The Exchange's fee schedule displays a rebate of $0.00003 per share as the default rate for Members, orders that add liquidity and a charge of 0.30% of the dollar value of the transaction as the

[3] As defined in Exchange Rule 1.5(n).

[4] Where "default" refers to the standard rate that the Exchange charges its Members for orders that add, remove, or route liquidity from the Exchange absent Members qualifying for additional volume tiered pricing. The Exchange maintains default rates for securities at or above $1.00 and securities priced below $1.00 for orders that add, remove, and route liquidity. The Exchange notes that a Member may qualify for a higher rebate if the Member satisfies the volume tier requirements outlined in Footnotes 1, 2, 6, 11 and 13 of the fee schedule for securities priced at or above $1.00. The Exchange notes that the volume from securities priced below $1.00 contributes toward volume tiered requirements for securities priced at or above $1.00 as outlined in Footnotes 1, 2, 6, 11 and 13 of the fee schedule. Unless otherwise stated in the fee schedule, the Exchange does not offer volume tiered pricing for securities priced below $1.00.

[5] This fee is consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities priced below $1.00.

[6] The Exchange currently assess no charge for Members' orders that route to the following away trading destinations and add liquidity: NYSE Arca, Inc. ("NYSE Arca"), New York Stock Exchange LLC ("NYSE"), The NASDAQ Stock Market LLC ("NASDAQ"), LavaFlow ECN, NASDAQ OMX BX, Inc.'s ("NASDAQ BX"), CBOE Stock Exchange, Inc. ("CBSX"), BATS Y-Exchange, Inc. ("BATS BYX"), BATS Exchange, Inc. ("BATS BZX"), EDGA Exchange, Inc. ("EDGA"), NASDAQ OMX PSX, Inc. ("NASDAQ PSX"), and NYSE MKT LLC (formerly NYSE Amex).

default rate for Members, orders that remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses no charge for Members' orders that that yield Flag OO in securities priced below $1.00, which represents Members' orders that are matched at the "Direct Edge Opening" and either add or remove liquidity. The Exchange proposes to amend its fee schedule to assess no charge for Flag OO. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag OO for securities priced below $1.00 that are matched at the Direct Edge Opening.

The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that yield Flag RC in securities priced below $1.00. The Exchange currently assesses no charge for Members' orders that yield Flag RC, which route to the National Stock Exchange, Inc. (the "NSX") and add liquidity. The Exchange proposes to amend its fee schedule to assess no charge for Flag RC. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag RC for securities priced below $1.00 that route to the NSX and add liquidity.

As provided in Footnote 3 of the fee schedule, the Exchange currently assesses a charge of 0.10% of the dollar value of the transaction for Members' orders that yield Flag C, which route to NASDAQ BX and remove liquidity in securities priced below $1.00. The Exchange proposes to amend its fee schedule to list a charge of 0.10% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" for Flag C. The Exchange notes that this proposal does not modify the current rate it charges its Members for orders that yield Flag C for securities priced below $1.00 that route to NASDAQ BX and add liquidity. In addition, the Exchange proposes to delete "removes liquidity" in Flag C's description because the Exchange's reference to "routed" implies that Flag C routes and removes liquidity. The Exchange proposes to delete the text of Footnote 3 and its associated annotations on the default rate for routing and removing liquidity at the top of the fee schedule in addition to Flags C, D, J, L, and 2 on the Exchange's fee schedule because the Exchange proposes to list these rates in the column "Fee/(Rebate) Securities below $1.00" on the Exchange's fee schedule. The Exchange proposes to insert "intentionally omitted" in Footnote 3 in place of the deleted text.

The Exchange notes that Footnote 10 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. However, in practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY, which routes to BATS BYX and removes liquidity using routing strategies ROUC, ROUE or ROBY.[7] This rate represents a pass through of the rate that BATS BYX charges DE Route. Accordingly, the Exchange proposes to amend its fee schedule to assess a charge of 0.10% of the dollar value of the transaction for Flag BY. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag BY for securities priced below $1.00 that route to BATS BYX and remove liquidity using routing strategies ROUC, ROUE or ROBY. In addition, the Exchange proposes to delete the text of Footnote 10 and its associated annotation on Flag BY on the fee schedule because the Exchange proposes to list this rate in the column "Fee/(Rebate) Securities below $1.00." The Exchange proposes to insert "intentionally omitted" in Footnote 10 in place of the deleted text. In addition, the Exchange proposes to delete "removes liquidity" in Flag BY's description because the Exchange's reference to "routed" implies that Flag BY routes and removes liquidity.

Customer internalization generally occurs when one Member presents two orders to the Exchange from the same Member Participant Identifier ("MPID") separately, rather than in a paired manner, and the two orders inadvertently match with one another.[8] As provided in Footnote 11 of the fee schedule, the Exchange currently assesses a charge of 0.15% of the dollar value of the transaction per side for Members' orders in securities priced below $1.00 that yield Flags 5, EA and ER, which are the flags associated with customer internalization. The Exchange proposes to amend its fee schedule to list the rate of 0.15% of the dollar value of the transaction per side in the column "Fee/(Rebate) Securities below $1.00" for Flags 5, EA and ER. The Exchange notes that this proposal does not modify the current rates charged for Members' orders that yield Flags 5, EA and ER for securities priced below $1.00 that are associated with customer internalization. The Exchange also notes that the internalization fee is no more favorable than the prevailing maker/taker spread of 0.30% of the dollar value of the transaction.[9] In addition, the Exchange proposes to delete the text of Footnote 11 on the Exchange's fee schedule that states, "for stocks priced below $1, the internalization rate is 0.15% of the dollar value of the transaction per share per side" because the Exchange proposes to list these rates in the column "Fee/(Rebate) Securities below $1.00" on the Exchange's fee schedule because this text is no longer necessary given the Exchange's proposed changes.

Rate Changes for Flag AA

The Exchange currently assesses no charge for Members' orders that yield Flag AA for securities priced at or above $1.00 at this time. The Exchange proposes to increase the rate it charges for Flag AA in securities priced at or above $1.00 from no charge to $0.0012 per share per side for Members' orders that inadvertently match with themselves at the Midpoint Match [10] in the same MPID. Therefore, the Exchange's proposed internalization fee will be no more favorable than the current spread of $0.0012 per share per side for Members' orders that add liquidity at the Midpoint Match and yield Flag MM and Members' orders that remove liquidity at the Midpoint Match and yield Flag MT. The Exchange notes that this proposed internalization fee will discourage Members from engaging in potential wash sales.

In conjunction with the Exchange's proposal to amend the rate for Members' orders that yield Flag AA in securities priced at or above $1.00 as described above, the Exchange proposes to amend the rate it charges Members for orders that yield Flag AA in securities priced below $1.00. The Exchange currently assesses no charge for Members' orders that inadvertently match with themselves at the Midpoint Match in the same MPID. The Exchange proposes to charge Members 0.15% of the dollar value of the transaction per side for securities priced below $1.00 so the internalization fee is no more favorable than the spread per side for Members' orders in securities priced below $1.00 that add liquidity at the Midpoint Match

[7] As defined in Exchange Rule 11.9(b)(3).

[8] Members are advised to consult Exchange Rule 12.2 regarding fictitious trading.

[9] *See* Securities Exchange Release No. 64452 (May 10, 2011), 76 FR 28110, 28111 (May 13, 2011) (SR–EDGX–2011–13), where the Exchange represented that it "will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread."

[10] As defined in Exchange Rule 11.5(c)(7).

and yield Flag MM, and Members' orders that remove liquidity at the Midpoint Match and yield Flag MT.[11] The Exchange notes that this proposed internalization fee will discourage Members from engaging in potential wash sales.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Securities Priced Below $1.00

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that add liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that add liquidity, the Exchange proposes to list the default rebate of $0.00003 per share next to Flags B, V, Y, 3, 4, HA, MM, RP, and ZA. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to offer Members a default rebate of $0.00003 per share for orders that add liquidity in securities priced below $1.00 because it will incentivize Members to add liquidity to the Exchange by offering them a rebate and offering rebates to Members that add liquidity is consistent with the Exchange's maker/taker model. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags B, V, Y, 3, 4, HA, MM, RP, and ZA for securities priced below $1.00 that add liquidity from the Exchange. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that remove liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that remove liquidity, the Exchange proposes to list the default removal rate of 0.30% of the dollar value of the transaction next to Flags N, W, 6, BB, MT, PI, PR, and ZR. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to charge Members a default removal rate of 0.30% of the dollar value of the transaction because these fees allow the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags N, W, 6, BB, MT, PI, PR, and ZR for securities priced below $1.00 that remove liquidity from the Exchange. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the default rate that corresponds to each liquidity flag for securities priced below $1.00 that route and remove liquidity on the Exchange's fee schedule represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Specifically, for Members' orders that route and remove liquidity, the Exchange proposes to list the default rate of 0.30% of the dollar value of the transaction next to Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, RQ, RR, RT, RX, and SW. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. In addition, the Exchange believes it is equitable and reasonable to charge Members a default routing and removal rate of 0.30% of the dollar value of the transaction because these fees allow the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. The Exchange also notes that routing through DE Route is voluntary. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, RQ, RR, RT, RX, and SW for securities priced below $1.00 that route to away trading destinations and remove liquidity. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to pass through no charge for securities priced below $1.00 that route to some away trading destinations and add liquidity represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to these away trading destinations through DE Route. The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to these away trading destinations and add liquidity in securities priced below $1.00. Currently, the away trading destinations assess no charge to DE Route for orders that route to those destinations and add liquidity, and DE Route passes through no charge to the Exchange and the Exchange passes through no charge to its Members.[14] Therefore, since DE Route is

[11] The rate of 0.15% of the dollar value of the transaction per side is derived from calculating the spread between adding and removing liquidity in securities priced below $1.00 for Flags MM and MT. The Exchange assumes a security is priced at $0.99 and dividing that result by two (2) to account for each side of the transaction: (0.30% × 1 share × $0.99) − (rebate of $0.00003 per share) = $0.00294/2 = $0.00147 per share/$0.99 × 100 = approx. 0.15% of the dollar value of the transaction.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] NYSE Arca, NYSE, NYSE MKT LLC, BATS BZX, BATS BYX, CBSX, NASDAQ, NASDAQ BX, NASDAQ PSX, LavaFlow ECN, and EDGA assess customers no charge for orders that add liquidity on their respective exchanges in securities priced below $1.00. *See* NYSE Arca, NYSE Arca Trading Fees, *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees;* NYSE, NYSE Trading Fees, *http://usequities.nyx.com/markets/nyse-equities/trading-fees;* NYSE MKT LLC, NYSE MKT Trading Fees, *http://usequities.nyx.com/markets/nyse-mkt-equities/trading-fees;* BATS, BATS BZX and BYX Exchange Fee Schedules, *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf;* Chicago Board Options Exchange, CBOE Stock Exchange Fees Schedule, *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfees.hedule.pdf;* NASDAQ, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2;* NASDAQ OMX BX, Inc., NASDAQ OMX BX Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing;* NASDAQ OMX PSX,

not charged a fee by the away trading destination for routing orders that add liquidity to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to not charge its Members for orders that yield Flags A, F, M, 8, 9, 10, RA, RB, RS, RW, RY, and RZ. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to some away trading destinations and add liquidity through DE Route. The Exchange notes that its proposal conforms to an existing practice and does not modify the rates that the Exchange has been charging its Members for orders that yield Flags A, F, M, 8, 9, 10, RA, RB, RS, RW, RY, and RZ for securities priced below $1.00 that route to these away trading destinations and add liquidity. The Exchange notes that routing through DE Route is voluntary. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes that its proposal to assess no charge for securities priced below $1.00 that yield Flag OO represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Members will yield Flag OO when their orders are matched at the Direct Edge Opening on EDGX, whether the Member's order adds or removes liquidity. The Exchange's fee schedule displays a rebate of $0.00003 per share as the default rate for Members' orders that add liquidity and a charge of 0.30% of the dollar value of the transaction as the default rate for Members' orders that remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses no charge for Members' orders that that yield Flag OO in securities priced below $1.00, which represents Members' orders that are matched at the "Direct Edge Opening" and either add or remove liquidity. Because the Exchange is not a primary listing market, Flag OO generates low volume; therefore, the Exchange believes its proposal to assess no charge is equitable and reasonable given that the Exchange incurs only nominal administrative, clearing, and other operating costs in executing trades. The Exchange notes that its proposal conforms an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag OO for securities priced below $1.00 that are matched at the Direct Edge Opening. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to assess no charge for securities priced below $1.00 that yield Flag RC represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Members will yield Flag RC when their orders route to the NSX and add liquidity. The Exchange's fee schedule does not clearly disclose its pricing for Members' orders that yield Flag RC in securities priced below $1.00. The Exchange notes that the NSX offers a rebate to DE Route for Members' orders that yield Flag RC. The Exchange also notes that Flag RC generates low volume and nominal revenue to the Exchange. Therefore, the Exchange believes its proposal to assess no charge is equitable and reasonable because the rebate paid by NSX to DE Route and DE Route to the Exchange does not offset the administrative, clearing, and other operating costs associated with passing through the NSX rebate to Members. The Exchange notes that routing through DE Route is voluntary. The Exchange also notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag RC for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to revise its fee schedule to list the rate of 0.10% of the dollar value of the transaction for Members' orders that yield Flag C for securities priced below $1.00 represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because it is a pass-through rate and the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NASDAQ BX through DE Route. Therefore, since DE Route is charged a fee by NASDAQ BX for routing orders that remove liquidity to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to charge its Members for orders that yield Flag C. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to NASDAQ BX and remove liquidity through DE Route. The Exchange notes that routing through DE Route is voluntary. The Exchange notes that its proposal does not modify the current rate it charges its Members for orders that yield Flag C for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above and deleting the text of Footnote 3 and its associated annotations on Flags C, D, J, L, and 2, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to pass through 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY for securities priced below $1.00 represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BATS BYX through DE Route. The Exchange notes that Footnote 10 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. In practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY. Since DE

Inc., NASDAQ OMX PSX Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing*; LavaFlow ECN, LavaFlow Pricing, *https://www.lavatrading.com/solutions/pricing.php*; and EDGA Exchange, Inc., EDGA Exchange Fee Schedule, *http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx*.

Route is charged a fee by BATS BYX for routing orders that remove liquidity using routing strategies ROUC, ROUE or ROBY to its trading center in securities priced below $1.00, the Exchange believes it is equitable and reasonable to charge its Members for orders that yield Flag BY. The Exchange's proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BATS BYX and remove liquidity through DE Route. The Exchange notes that its proposal conforms to an existing practice and does not modify the rate that the Exchange has been charging its Members for orders that yield Flag BY for securities priced below $1.00. The Exchange notes that routing through DE Route is voluntary. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above and deleting the text of Footnote 10 and its associated annotation on Flag BY, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange also believes that this proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal revise its fee schedule to list a charge of 0.15% of the dollar value of the transaction per side for Members' orders in securities priced below $1.00 that yield Flags 5, EA and ER, which are associated with customer internalization, represents an equitable allocation of reasonable dues, fees and other charges. The Exchange's rate of 0.15% of the dollar value of the transaction per side for customer internalization is equitable because the rate is consistent with the Exchange's proposed maker/taker spread for securities priced below $1.00. Therefore, in each case, the internalization fee of 0.15% of the dollar value of the transaction per side is no more favorable to the Member than the proposed maker/taker spread. Since the spread for customer internalization equals the Exchange's maker/taker spread, the Exchange's proposal continues to discourage Members from engaging in potential wash sales. The Exchange notes that its proposal does not modify the current rates it charges its Members for orders that yield Flags 5, EA or ER for securities priced below $1.00. The Exchange's proposal to revise the corresponding text on the fee schedule, as described above and deleting the applicable text of Footnote 11, will increase the level of transparency of the Exchange's fee schedule and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members. Lastly, the Exchange believes that these proposed rates are non-discriminatory in that they apply uniformly to all Members.

As described in Section 3, the Exchange proposes to make conforming and non-substantive revisions to the fee schedule in general and the description of certain flags in particular in order to increase the level of transparency of the Exchange's fee schedule, promote consistent descriptions and applications, and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members.

Rate Changes for Flag AA

The Exchange believes that its proposal to increase the rate it charges Members for customer internalization from no charge per share per side to $0.0012 per share per side for Members' orders that yield Flag AA in securities priced at or above $1.00 is an equitable allocation of reasonable dues, fees and other charges. The Exchange's proposed rate of $0.0012 per side per share for Members' orders that inadvertently match with themselves at the Midpoint Match in the same MPID is equitable because the rate is consistent with the Exchange's proposed maker/taker spread of $0.0012 per share, where the rate to add liquidity at the Midpoint Match and yield Flag MM is $0.0012 per share and the rate to remove liquidity at the Midpoint Match and yield Flag MT is $0.0012 per share. Therefore, in each case, the proposed internalization fee of $0.0012 per side per share, equaling a total cost of $0.0024 per share for Flag AA, is no more favorable to the Member than the proposed maker/taker spread for Midpoint Match. Since the spread for customer internalization and the Exchange's maker/taker spread for Midpoint Match will equal $0.0012 per share, the Exchange's proposal discourages Members from engaging in potential wash sales. Lastly, the Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that its proposal to charge Members 0.15% of the dollar value of the transaction per side for customer internalization for orders that yield Flag AA in securities priced below $1.00 is an equitable allocation of reasonable dues, fees and other charges. The Exchange's proposed rate of 0.15% of the dollar value of the transaction per side for Members' orders that inadvertently match with themselves at the Midpoint Match in the same MPID is equitable because the rate is consistent with the Exchange's proposed maker/taker spread for Midpoint Match. Therefore, in each case, the proposed internalization fee of 0.15% of the dollar value of the transaction per side, equaling a total cost of 0.30% of the dollar value of the transaction, where the rebate to add to Midpoint Match (Flag MM) is $0.00003 per share and the fee to remove from Midpoint Match (Flag MT) is 0.30% of the dollar value of the transaction, is no more favorable to the Member than the proposed maker/taker spread for Midpoint Match. Since the spread for customer internalization will equal the Exchange's maker/taker spread for Midpoint Match, the Exchange's proposal discourages Members from engaging in potential wash sales. Lastly, the Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. As described in Section 3, the Exchange proposes to make conforming and non-substantive revisions to the fee schedule in general and the description of certain flags in particular in order to increase the level of transparency of the Exchange's fee schedule, promote consistent descriptions and applications, and improve the Exchange's ability to effectively convey the rates for securities priced below $1.00 to Members.

Securities Priced Below $1.00

Regarding Flags B, V, Y, 3, 4, HA, MM, RP, and ZA, the Exchange believes that its proposal to amend its fee schedule to list the default rebate of $0.00003 in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that add liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags N, W, 6, BB, MT, PI, PR, and ZR, the Exchange believes that its proposal to amend its fee schedule to list the default rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that remove liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags D, G, I, J, K, L, O, Q, R, S, T, U, X, Z, 2, 7, CL, RQ, RR, RT, RX, and SW, the Exchange believes that its proposal to amend its fee schedule to list the default rate of 0.30% of the dollar value of the transaction in the column "Fee/(Rebate) Securities below $1.00" will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for orders that route and remove liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flags A, F, M, 8, 9, 10, RA, RB, RS, RW, RY, and RZ, the Exchange's fee schedule does not clearly disclose its pricing for Members' orders that route to these away trading destinations and add liquidity in securities priced below $1.00. The Exchange believes that its proposal to pass through no charge for securities priced below $1.00 that route to some away trading destinations and add liquidity will increase competition because it is comparable to the rates charged by the away trading destinations for adding liquidity. The Exchange believes its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rates for orders that route and add liquidity and they apply uniformly to all Members that place orders in securities priced below $1.00. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flag OO, the Exchange's fee schedule displays a rebate of $0.00003 per share as the default rate for Members orders that add liquidity and a charge of 0.30% of the dollar value of the transaction as the default rate for Members orders that remove liquidity for securities priced below $1.00. However, in practice, the Exchange assesses no charge for Members' orders that that yield Flag OO in securities priced below $1.00, which represents Members' orders that are matched at the "Direct Edge Opening" and either add or remove liquidity. The Exchange believes that its proposal to assess no charge will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flag OO and it applies uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flag RC, the Exchange's fee schedule does not clearly disclose its pricing for Members' orders yield Flag RC in securities priced below $1.00. The Exchange believes that its proposal to assess no charge will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flag RC and it applies uniformly to all Members that place orders in securities priced below $1.00.

Regarding Flag C, the Exchange believes that its proposal to amend its fee schedule to list a charge of 0.10% of the dollar value of the transaction will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rate for Flag C and it applies uniformly to all Members that place orders in securities priced below $1.00. By charging a pass-through rate for securities priced below $1.00 that route to NASDAQ BX and remove liquidity, the Exchange will increase competition because it is comparable to the rates charged by NASDAQ BX for removing liquidity. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flag BY, the Exchange notes that Footnote 10 on the fee schedule incorrectly lists a flat rate of $0.0010 per share for Members' orders that yield Flag BY in securities priced below $1.00. However, in practice, the Exchange charges Members 0.10% of the dollar value of the transaction for Members' orders that yield Flag BY. The Exchange believes that its proposal to pass through a charge of 0.10% of the dollar value of the transaction for securities priced below $1.00 that route to BATS BYX and remove liquidity will increase competition because it is comparable to the rates charged by BATS BYX for removing liquidity. The Exchange believes its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal conforms to an existing practice and does not modify the rate for Flag BY and it applies uniformly to all Members that place orders in securities priced below $1.00. The Exchange believes that its proposal will increase competition for routing services because the market for order execution is competitive and the Exchange's proposal provides customers with another alternative to route their orders. The Exchange notes that routing through DE Route is voluntary.

Regarding Flags 5, EA and ER, the Exchange believes that its proposal to amend its fee schedule to list the rate of 0.15% of the dollar value of the transaction per side in the column "Fee/(Rebate) Securities below $1.00" for customer internalization will not burden intermarket or intramarket competition as the proposed rate is no more favorable than the Exchange's prevailing maker/taker spread. In addition, the Exchange believes that its proposal will not burden intramarket competition or intermarket competition given that the Exchange's proposal does not modify its current rates for Flags 5, EA and ER and they apply uniformly to all Members that place orders in securities priced below $1.00.

Rate Changes for Flag AA

Regarding Flag AA in securities priced at or above $1.00, the Exchange believes that its proposal to assess a charge of $0.0012 per share per side for Members' orders that inadvertently match with themselves at the Midpoint Match in the same MPID will not burden intermarket or intramarket competition as the proposed rate is no more favorable than the Exchange's prevailing maker/taker spread at the Midpoint Match. In addition, the Exchange believes that its proposal will not burden intramarket competition or intermarket competition because it applies uniformly to all Members.

Regarding Flag AA in securities priced below $1.00, the Exchange

believes that its proposal to assess a charge of 0.15% of the dollar value of the transaction per side will not burden intermarket or intramarket competition as the proposed rate is no more favorable than the Exchange's prevailing maker/taker spread at the Midpoint Match. In addition, the Exchange believes that its proposal will not burden intramarket competition or intermarket competition because it applies uniformly to all Members that place orders in securities priced below $1.00.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2013–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–10 and should be submitted on or before April 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05583 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 19b–4(f)(2)[sic].

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69037; File No. SR–FINRA–2012–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Require Members To Report to TRACE the "Factor" in Limited Instances Involving Asset-Backed Security Transactions

March 5, 2013.

I. Introduction

On November 29, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require FINRA members to report to the Trade Reporting and Compliance Engine ("TRACE") the Factor used to determine the size (volume) of each transaction in an Asset-Backed Security ("(ABS") (except ABS traded To Be Announced ("TBA")), in the limited instances when members effect such transactions as agent and charge a commission.[3] The proposed rule change was published for comment in the **Federal Register** on December 18, 2012.[4] The Commission received one comment on the proposal and a response to the comment from FINRA.[5] On January 30, 2013, the Commission extended to March 18, 2013 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[6] This order approves the proposed rule change.

II. Description of the Proposal

FINRA utilizes TRACE to collect from its members and publicly disseminate information on secondary over-the-counter transactions in corporate debt securities and Agency Debt Securities [7] and certain primary market transactions. FINRA also utilizes TRACE to collect information on ABS transactions but, until recently, FINRA's rules did not provide for the dissemination of such information publicly.[8] Last year, however, FINRA amended its rules to provide for public dissemination of information regarding, among other things, certain ABS traded in Specified Pool Transactions.[9] FINRA has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The terms "Asset-Backed Security," "To Be Announced," and "Factor" are defined in FINRA Rules 6710(m), (u), and (w), respectively.

[4] *See* Securities Exchange Act Release No. 68414 (December 12, 2012), 77 FR 74896 ("Notice").

[5] *See* comment from Mark Sokolow, dated December 18, 2012 ("Sokolow Comment"); *see also* response letter from Kathryn Moore, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated January 11, 2013 ("FINRA Letter").

[6] *See* Securities Exchange Act Release No. 68768 (January 30, 2013), 78 FR 8216 (February 5, 2013).

[7] The term "Agency Debt Security" is defined in FINRA Rule 6710(*l*).

[8] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (approving SR–FINRA–2009–065).

[9] *See* Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (approving SR–FINRA–2012–042). The term "Specified Pool Transaction" is defined in FINRA Rule 6710(x).

proposed the instant rule change to prepare for such dissemination, which has not yet become effective, as well as to prepare for any future dissemination of additional ABS market segments.[10]

Specifically, FINRA has proposed to amend FINRA Rule 6730(d)(2) to require a member to report to TRACE the Factor in the limited instances when the member effects a transaction in an ABS (except a TBA transaction) as agent and charges a commission.[11] Under FINRA's current transaction reporting rules, for a transaction in an ABS that is backed by mortgages or other assets that amortize over the life of the security, instead of reporting the size of the transaction by reporting the total par or principal value, a member must report two items from which the size is calculable: (1) The original face value of the ABS, which is the size at issuance; and (2) the Factor, but only if the Factor used to execute the transaction is not the most current Factor that is publicly available at the Time of Execution [12] (a "non-conforming Factor").[13] As a result of the proposed rule change, when an ABS transaction (except for a TBA transaction) is executed in an agency capacity with a commission charged, the FINRA member would be required to report the Factor regardless of whether it is the most current Factor publicly available at the Time of Execution or is a non-conforming Factor.[14] In addition, FINRA has proposed supplementary material to make clear that the requirement to report the Factor will apply to every ABS transaction (except for a TBA transaction) executed in an agency capacity with a commission charged, including the small number of transactions in non-amortizing ABS.[15]

FINRA has also proposed technical amendments to reorganize the current size reporting requirements in FINRA Rule 6730(d)(2) and to make them consistent with proposed Rule 6730(d)(2)(B)(iv).[16]

FINRA stated that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date will be no later than 270 days following publication of the *Regulatory Notice*.[17]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(h)(6) of the Act,[19] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets.[20] FINRA believes that the proposed rule change would promote price transparency provided by TRACE for ABS transactions executed in an agency capacity with a commission charged.[21] When an ABS transaction is executed in an agency capacity with a commission charged, the TRACE system must take the Factor, as well as other information, into account when calculating the disseminated price of the transaction.[22] Currently, all components of the formula that would be used to calculate a disseminated price in an agency ABS transaction, except the Factor, are reported by a member effecting the transaction.[23] FINRA represented that requiring that the Factor also be reported would ensure the accuracy of the disseminated price for an agency ABS transaction because the TRACE system would rely exclusively upon information reported by the members that are parties to such a transaction in calculating the transaction's disseminated price.[24] The Commission believes that the proposal is reasonably designed to promote the accuracy of the disseminated price data for agency ABS transactions and to further the goal of increasing price transparency in the ABS market.

The commenter suggested that the proposed rule change would add an administrative burden to the industry.[25] FINRA responded that the proposed rule change is necessary and appropriate, and noted that it would be narrowly tailored to apply to the very limited number of ABS transactions where a member trades in an agency capacity and charges a commission.[26] FINRA also noted that the accuracy of the price transparency provided by TRACE assists all market participants in determining the quality of their executions and firms in complying with their regulatory obligations.[27] The Commission believes that the commenter has not raised any issue that would preclude approval of the proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–FINRA–2012–052) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05570 Filed 3–11–13; 8:45 am]

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[10] *See* Notice, 77 FR at 74896.

[11] *See* proposed Rule 6730(d)(2)(B)(iv); *see also* Notice, 77 FR at 74896. FINRA stated that only a small number of ABS transactions are executed on an agency basis with a commission charged; ABS are traded mostly on a principal basis. *See id.*

[12] The term "Time of Execution" is defined in FINRA Rule 6710(d).

[13] *See* FINRA Rules 6730(c)(2) and (d)(2); *see also* Notice, 77 FR at 74896. When a member uses the most current Factor that is publicly available at the Time of Execution of the transaction, the member currently is not required to report the Factor. Instead, the TRACE system incorporates the most current Factor publicly available at the Time of Execution. FINRA receives such information from commercial data vendors. *See* Notice, 77 FR at 74896 n.7.

[14] *See* proposed Rule 6730(d)(2)(B)(iv); *see also* Notice, 77 FR at 74897.

[15] *See* proposed supplementary material .01 to Rule 6730(d)(2); *see also* Notice, 77 FR at 74897. For transactions in non-amortizing ABS, a member would be required to report 1.0 as the Factor. *See id.* at 74897 n.11.

[16] *See* proposed Rules 6730(d)(2)(A)–(2)(B)(iv).

[17] *See* Notice, 77 FR at 74897.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78o–3(h)(6).

[20] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8134, 8136 (January 29, 2001).

[21] *See* Notice, 77 FR at 74897.

[22] *See id.* at 74896–97.

[23] *See id.* at 74897.

[24] *See id.*

[25] *See* Sokolow Comment.

[26] *See* FINRA Letter at 2.

[27] *See id.*

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69041; File No. SR–BX–2013–018]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Establishing a Program for Managed Data Solutions (MDS)

March 5, 2013.

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 February 22, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes add new BX Rule 7026 (Distribution Models) to establish a program for Managed Data Solutions ("MDS").

While the fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2013.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.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 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

BX is now proposing to create a new data distribution model known as MDS in new Rule 7026 to further the distribution of BX TotalView.[3] This offers a new pricing and administrative option available to firms seeking simplified market data administration for MDS products containing BX TotalView ("BX Depth Data").

Proposed BX Rule 7026 is similar to The NASDAQ Stock Market LLC ("NASDAQ") Rule 7026 in terms of offering MDS for a fee to members of the Exchange.[4] MDS may be offered by members of the Exchange as well as Distributors [5] to clients and/or client organizations that are using the BX Depth Data internally in a non-display manner. This new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. Distributors offering MDS continue to be fee liable for the applicable distributor fees for the receipt and distribution of the BX Depth Data such as BX Total View.[6]

MDS is a pricing and administrative option that will assess a new fee schedule to Distributors of BX Depth Data that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with limited entitlement controls (e.g., usernames and/or passwords) ("Managed Data Recipients"). However, the Distributor must first agree to reformat, redisplay and/or alter the BX Depth Data prior to retransmission, but not to affect the integrity of the BX Depth Data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. MDS is any retransmission datafeed product containing BX Depth Data offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients. The Managed Data Recipients may only use the information for internal, non-display purposes and may not distribute the information outside of their organization.

In the past, retransmissions were considered to be an uncontrolled data product if the Distributor did not control both the entitlements and the display of the information. Over the last ten years, however, Distributors have improved the technical delivery and monitoring of data, and the MDS offering responds to an industry need to offer new pricing and administrative options.

The Exchange notes that some Distributors believe that MDS is a better controlled datafeed product and as such should not be subject to the same rates as a datafeed. However, the Distributors may only have contractual control over the data and may not be able to verify how Managed Data Recipients are actually using the data at least without involvement of the Managed Data Recipient.[7] The proposal to offer MDS to Distributors would assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery. Thus, offering MDS on BX per proposed Rule 7026 would allow Distributors to deliver MDS to their clients and would allow Professional and Non-Professional [8] Subscribers [9] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed Rule 7026(b)(4) states that the term "BX TotalView" shall have the same meaning as set forth in Rule 7023(a). Rule 7023(a) states that the BX TotalView entitlement allows a Subscriber to see all individual NASDAQ OMX BX Equities System participant orders and quotes displayed in the system, the aggregate size of such orders and quotes at each price level, and the trade data for executions that occur within the NASDAQ OMX BX Equities System.

[4] *See* Securities Exchange Release No. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138) (notice of filing and immediate effectiveness implementing MDS on NASDAQ) (the "NASDAQ MDS filing"). Other options markets have also implemented a managed data solution. *See*, for example, Securities Exchange Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–67)(notice of filing and immediate effectiveness implementing a managed data solution on ISE).

[5] Proposed Rule 7026(b)(2) states that the term "Distributor" shall have the same meaning as set forth in Rule 7019(b). Rule 7019(b) states that a "Distributor" of Exchange data is any entity that receives a feed or data file of Exchange data directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute an Exchange distributor agreement. The Exchange itself is a vendor of its data feed(s) and has executed an Exchange distributor agreement and pays the distributor charge.

[6] *See*, for example, Rule 7023.

[7] In the NASDAQ MDS filing, for example, it was noted that some Distributors have even held off on deployment of new product offerings, pending the resolution to this issue. *See* supra note 4.

[8] Proposed Rule 7026(b)(1) states that the term "Non-Professional" shall have the same meaning as set forth in Rule 7023(b). Rule 7023(b) states that a "Non-Professional" is a natural person who is neither: (A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[9] Proposed Rule 7026(b)(3) states that the term "Subscriber" shall have the same meaning as set forth in Rule 7023(c). Rule 7023(c) states that a "Subscriber" is any access that a distributor of the data entitlement package(s) provides to: (1) Access the information in the data entitlement package(s); or (2) communicate with the distributor so as to cause the distributor to access the information in the data entitlement package(s). If a Subscriber is part of an electronic network between computers

use BX Depth Data for their own non-display use.[10]

Finally, proposed Rule 7026 establishes a fee schedule for Distributors and Subscribers of MDS products containing BX Depth Data for non-display use only. Specifically, Distributors would be assessed $750/month per Distributor for the right to offer MDS to client organizations. Non-Professional Subscribers would be assessed $20/month per Subscriber for the right to obtain BX Depth Data (which includes TotalView) for internal non-display use only. And Professional Subscribers would be assessed $100/month per Subscriber for the right to receive BX Depth Data (TotalView) for internal non-display use only.[11]

This new fee is meant to lower the fee for current and potential future recipients of datafeed products by offering a new pricing option. No recipients will have an increased fee due to this filing.

Accordingly, the Exchange believes that the proposed rule establishes a program that allows all BX Members and Distributors a practicable methodology to access and receive MDS, similarly to other options [sic] exchanges.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(4) of the Act,[13] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of BX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[14]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, "At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved."

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power in those situations where competition may not be sufficient, 'such as in the creation of a consolidated transactional reporting system.'" *NetCoalition*, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

BX believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist in the fee schedules of another exchange, namely NASDAQ. These distinctions (e.g. Distributor versus Subscriber, Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. BX believes that the MDS offering promotes broader distribution of controlled data, while offering a fee reduction in the form of a pricing option resulting in lower fees for Subscribers. The MDS proposal is reasonable in that it offers a methodology to get MDS data for less. It is equitable in that it provides an opportunity for all Distributors and Subscribers, Professional and Non-Professional, to get MDS data without unfairly discriminating against any.

Thus, if BX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fees are entirely optional to all parties. Firms are not required to choose to purchase MDS or to utilize any specific pricing alternative. BX is not required to make MDS available or to offer specific pricing alternatives for potential purchases. BX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. BX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular Subscriber should not have to pay for an entitlement.

[10] Downstream recipients are not allowed to redistribute the MDS products.

[11] Each of the fees for MDS on BX is initially set to be significantly lower than the fees for similar MDS on NASDAQ. *See* NASDAQ Rule 7026.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. BX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposal is, as described below pro-competitive. The proposal offers an overall fee reduction, which is, by its nature, pro-competitive. Moreover, there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end Subscribers insofar as they provide information that end Subscribers expect will assist them in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

"No one disputes that competition for order flow is fierce." *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including more than ten SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two Financial Industry Regulatory Authority, Inc. ("FINRA") regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and

transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex (now NYSE MKT), NYSEArca, DirectEdge and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products as, for example, BATS and Arca did before registering as exchanges by publishing Depth-of-Book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. BX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

Competition among platforms has driven BX continually to improve its platform data offerings and to cater to customers' data needs. For example, BX has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. BX has created new products like TotalView, because offering data in multiple formatting allows BX to better fit customer needs. BX offers data via multiple extranet and telecommunication providers such as Verizon, BT Radianz, and Savvis, among others, thereby helping to reduce network and total cost for its data products. BX has an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting. BX has also implemented an Enterprise License option to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and ever increasing message traffic, BX's fees for market data have remained flat. The same holds true for execution services; despite numerous enhancements to BX's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for BX data is significant and the Exchange believes that this proposal itself clearly evidences such competition. BX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. This pricing option is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. BX continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with BX or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for the proposed data is highly competitive and continually evolves as products develop and change.

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.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2013–018 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.

All submissions should refer to File Number SR–BX–2013–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–018 and should be submitted on or before April 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. 2013–05568 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Endeavor Power Corp.; Order of Suspension of Trading

March 8, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Endeavor Power Corp. ("Endeavor Power"), quoted under the ticker symbol EDVP, because of questions regarding the accuracy of assertions in Endeavor Power's public filings and press releases relating to, among other things, patents.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on March 8, 2013 through 11:59 p.m. EDT on March 21, 2013.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2013–05729 Filed 3–8–13; 11:15 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 13, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Rachel Newman Karton, Program Analyst, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program Analyst, 202–619–1618 *rachel.newman@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Title: "Federal Cash Transaction Report; Financial Status Report Program Income Report Narrative Program Report."

Abstract: The Small Business Development Centers (SBDC) must provide semi-annual financial and programmatic reports outlining accomplishments.

Description of Respondents: SBDC Directors.

Form Number: 2113.

Annual Responses: 126.

Annual Burden: 7,308.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–05690 Filed 3–11–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13511 and #13512]

Michigan Disaster #MI–00038.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of michigan dated 03/04/2013.

Incident: Severe Storms and Flooding.

Incident Period: 01/30/2013 through 02/16/2013.

Effective Date: 03/04/2013.

Physical Loan Application Deadline Date: 05/03/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 12/04/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mecosta.

Contiguous Counties:

Michigan: Clare, Isabella, Lake,

Montcalm, Newaygo, Osceola.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 135116 and for economic injury is 135120.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 4, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–05708 Filed 3–11–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13492 and # 13493]

Mississippi Disaster Number MS–00064

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA—4101—DR), dated 02/13/2013.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/10/2013 through 02/22/2013.

Effective Date: 03/04/2013.

Physical Loan Application Deadline Date: 04/15/2013.

EIDL Loan Application Deadline Date: 11/13/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Mississippi, dated 02/13/2013 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Greene; Perry.

Contiguous Counties: (Economic Injury Loans Only):
Mississippi: George.
Alabama: Mobile.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–05691 Filed 3–11–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13513 and #13514]

Eastern Band of Cherokee Indians Disaster #NC–00049

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Eastern Band of Cherokee Indians (FEMA–4103–DR), dated 03/01/2013.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 01/14/2013 through 01/17/2013.

Effective Date: 03/01/2013.

Physical Loan Application Deadline Date: 04/30/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 12/02/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/01/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Eastern Band of Cherokee Indians and Associated Lands.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 135136 and for economic injury is 135146.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–05698 Filed 3–11–13; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0048]

Service Delivery Plan

AGENCY: Social Security Administration (SSA).

ACTION: Notice; request for comments.

SUMMARY: We are requesting public input as we finalize our Service Delivery Plan (SDP). We designed our SDP as a roadmap for how we will serve the public over the next decade. The SDP explains how we will build on our achievements, accommodate our resource constraints, and achieve the goals and objectives laid out in our Agency Strategic Plan.

DATES: To ensure that we consider your comments, we must receive them no later than April 11, 2013.

ADDRESSES: You may submit comments by one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0048 so that we associate

your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. Do not include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the Search function of the Web page to find docket number SSA–2012–0048. The system will issue you a tracking number to confirm your submission. It may take up to one week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Karl W. Tomak, Social Security Administration, 900 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3192. For information about our programs or about eligibility or filing for benefits, please visit our Internet site, Social Security Online at *http://www.socialsecurity.gov*, or call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Social Security's programs affect nearly every American and contribute significantly to the Nation's economy. Today, the challenge of service delivery is greater than at any other point in our history. Over the past few years, requests for our core services have risen dramatically as the population grew and baby boomers aged, passing through their most disability-prone years before retiring. In addition, we also have experienced huge increases in our workloads due to the economic downturn. These unprecedented workloads, combined with budget constraints, have placed serious strains on our service delivery. This means that we must work smarter to maintain the productivity gains of the past several years.

We intend to rely on technology-driven innovation, coupled with ongoing policy updates and streamlined business processes, to continue to transform our agency. We designed our SDP as part of our roadmap for continuing to provide excellent public service over the next decade, despite the challenges we expect to face.

When we initially developed the SDP, we sought suggestions from the public as to how we can continue to provide the best possible service. (77 FR 44306 (2012)). We have incorporated those suggestions into this version of the document. We invite you to review the document and send us any additional comments you have. Please see the information under **ADDRESSES** earlier in the document for methods to provide us your comments. We will not respond to your comments, but will consider them as we finalize our SDP.

Dated: March 5, 2013.

Karena L. Kilgore,

Executive Secretary.

[FR Doc. 2013–05595 Filed 3–11–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8218]

60-Day Notice of Proposed Information Collection: Iran Democracy Program Grants Vetting

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 May 13, 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: WaltersDL@state.gov*
- *Mail:* U.S. Department of State, 2201 C St. NW., Room #1254, Washington, DC 20520

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 Danika Walters, 2201 C St. NW., Room #1245, Washington, DC 20520, who may be reached on 202–647–1347 or at *WaltersDL@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Iran Program Grants.
- *OMB Control Number:* 1405–0176.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Office of Iranian Affairs, Bureau of Near Eastern Affairs (NEA/IR).
- *Form Number:* DS–4100.
- *Respondents:* Potential grantees and participants for Iran programs.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 200 hours.
- *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: Awarding grants is a key component of the State Department's Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) requires the Department to conduct vetting of potential Iran

program grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting, the Department collects information from grantees and sub-grantees regarding the identity and background of their key employees, boards of directors, and program participants.

Methodology: We will collect this information either through fax or electronic submission.

Dated: February 25, 2013.

Leslie Tsou,

Office Director, Office of Iranian Affairs, Bureau of Near Eastern Affairs, Department of State.

[FR Doc. 2013-05671 Filed 3-11-13; 8:45 am]

BILLING CODE 4710-31-P

DEPARTMENT OF STATE

[Public Notice: 8219]

30-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to April 11, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to 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 Regarding a Lost or Stolen U.S. Passport Book and/or Card
- *OMB Control Number:* 1405-0014
- *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/S/PMO/PC)
- *Form Number:* DS-64
- *Respondents:* Individuals or Households
- *Estimated Number of Respondents:* 991,351 respondents per year
- *Estimated Number of Responses:* 991,351 responses per year
- *Average Time per Response:* 5 minutes
- *Total Estimated Burden Time:* 82,612 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 Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a et seq, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must make a report of the lost or stolen passport to the Department of State before they receive a new passport, so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS-64 collects information identifying the person who held the lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport. False statements made knowingly or willfully on passport forms, in affidavits or other supporting documents are punishable by fine and/or imprisonment under U.S. law. (18 U.S.C. 1001, 1542-1544).

Methodology:

This form is used in conjunction with a DS-11, "Application for a U.S. Passport", or submitted separately to report loss or theft of a U.S. passport. Passport Services collects the information when a U.S. citizen or non-citizen national applies for a new U.S. passport and has been issued a previous, still valid U.S. passport that has been lost or stolen, or when a passport holder independently reports it lost or stolen. Passport applicants can either download the form from the Internet or obtain the form at any Passport Agency, Acceptance Facility, Embassy, or Consulate.

Additional Information:

In addition to general format changes, the following content changes have been made to the form:

- Section 1—the field "Driver's License or Military ID Number" was added to assist in the prevention of fraudulently submitted DS-64 forms.
- Section 2—was revised in its entirety breaking out the two main questions into items 2a through 2e to more efficiently organize the information we are requesting from the applicant.
- Section 3—A numbered, dark blue ribbon with instructions was added to clearly delineate the form sections and thereby assist the applicant to more efficiently review the information on the form.
- Section 3—the Department included a second signature and date line to allow for the signature of a second Parent/Guardian, if present, in keeping with the requirements of the DS-11 form.
- Section 3—at the bottom of this section, the Department added the

following text below the second signature and date line:

For a child under 16 "This form must be mailed in" and both parents or the child's legal guardians(s) must sign the form. In case of sole custody, include a copy of the supporting document (court order) with this form.

The Department estimates that these changes will not result in an increase in the current burden time of 5 minutes per respondent.

Dated: February 25, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–05651 Filed 3–11–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8222]

60-Day Notice of Proposed Information Collection: Shrimp Exporter's/ Importer's Declaration

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 May 13, 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: DS2031@state.gov.*
- *Mail:* Office of Marine Conservation (OES/OMC), Attn: Section 609 Program, 2201 C Street NW., Room 2758, Washington, DC, 20520.
- *Fax:* (202) 736–7350.
- *Hand Delivery or Courier:* Office of Marine Conservation (OES/OMC), Attn: Section 609 Program, 2201 C Street NW., Room 2758, Washington, DC 20520.

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 Marlene Menard, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818, who may be reached at *menardmm@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Shrimp Importer's/Exporter's Declaration.
- *OMB Control Number:* 1405–0095.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).
- *Form Number:* DS–2031.
- *Respondents:* Business or other for-profit organizations.
- *Estimated Number of Respondents:* 3,000.
- *Estimated Number of Responses:* 10,000.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 1,666.
- *Frequency:* On occasion.
- Obligation to Respond: Mandatory.

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 Form DS–2031 is necessary to document imports of shrimp pursuant to the State Department's implementation of Section 609 of Public Law 101–162, which prohibits the entry into the United States of shrimp harvested in ways which are harmful to sea turtles. Respondents are shrimp exporters and government officials in countries that export shrimp to the United States. The DS–2031 Form is to be retained by the importer for a period of three years subsequent to entry, and during that time is to be made available to U.S. Customs and Border Protection or the Department of State upon request.

Methodology: The DS–2031 form is completed by the exporter, the importer, and under certain conditions a government official of the exporting country. The DS–2031 Form accompanies shipments of shrimp and shrimp products to the United States and is to be made available to U.S. Customs and Border Protection at the time of entry.

Dated: February 28, 2013.

David A. Balton,

Deputy Assistant Secretary of State for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

[FR Doc. 2013–05653 Filed 3–11–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8221]

30-Day Notice of Proposed Information Collection: Exchange Student Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATE(S): Submit comments directly to the Office of Management and Budget (OMB) up to April 11, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the

OMB control number in the subject line of message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrej Kolaja, US Department of State, 2300 C St., Washington, DC 20037 who may be reached 202–632–9362 or *kolajaag@state.gov*.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* ECA Exchange Student Surveys.

• *OMB Control Number:* none.

• *Type of Request:* New Collection.

• *Originating Office:* Educational and Cultural Affairs (ECA/PE/C/PY).

• *Form Number:* SV2012–0007 (Foreign Exchange students) and SV2012–0010 (U.S. Exchange students).

• *Respondents:* Exchange students from foreign countries and the United States participating in Department of State sponsored programs from 2012–2016.

• *Estimated Number of Respondents:* 1800 annually—(1500 exchange students from foreign countries and 300 US students studying in foreign countries).

• *Estimated Number of Responses:* 1800 annually—(1500 exchange students from foreign countries and 300 US students studying in foreign countries).

• *Average Time per Response:* 15 minutes.

• *Total Estimated Burden Time:* 450 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This collection of information is under the provisions of the Mutual Educational and Cultural Exchange Act, as amended, and the Exchange Visitor Program regulations (22 CFR Part 62), as applicable. The information collected will be used by the Department to ascertain whether there are any issues that would affect the safety and well-being of exchange program participants.

Methodology

The survey will be sent electronically via the Survey Monkey tool and responses collected electronically. If a respondent requests a paper version of the survey it will be provided.

Dates: January 30, 2013.

Mary Deane Conners,

Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–05654 Filed 3–11–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8220]

30-Day Notice of Proposed Information Collection: Gilman Evaluation Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to April 11, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov*. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, Michelle Hale, ECA/P/V, Department of State (SA–44), 301 4th St. SW., Washington, DC 20547, who may be reached on 202–203–7205 or at *halemj2@state.gov*.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Gilman Evaluation Survey.

• *OMB Control Number:* None.

• *Type of Request:* New Collection.

• *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/P/V.

• *Form Number:* SV2012–0008.

• *Respondents:* All grant recipients of the Benjamin A. Gilman International Scholarship who studied abroad during the nine-year period spanning the 2002/2003 and 2010/2011 academic years.

• *Estimated Number of Respondents:* 6,184.

• *Estimated Number of Responses:* 2,474.

• *Average Time per Response:* 25 minutes.

• *Total Estimated Burden Time:* 1,031 hours.

• *Frequency:* One time.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

This request for a new information collection will allow ECA/P/V to conduct a survey to provide data not currently available in order to review the experiences of recipients of the Benjamin A. Gilman International

Scholarship grant while they were abroad; study the ways in which they shared what they learned with family, peers, and other community members upon returning to the United States; and investigate whether the international experience factored into their subsequent educational and professional choices. This study is authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (also known as the Fulbright-Hays Act) (22 U.S.C. 2451 et seq.). The survey will be sent electronically to all grant recipients who studied abroad during the nine-year period spanning the 2002/2003 and 2010/2011 academic years. Data gathered will enable analysis that can potentially be used to design new programs, improve existing programs, and to inform ongoing and future activities.

Methodology

The survey will be entirely web-based to ease any burden on the participant. The survey will be distributed and responses received electronically using the survey application SurveyGizmo.

Dated: February 28, 2013.

Matt Lussenhop,

Director of the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–05655 Filed 3–11–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8217]

Culturally Significant Objects Imported for Exhibition Determinations: "Hans Richter: Encounters"

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 objects to be included in the exhibition "Hans Richter: Encounters," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Los Angeles County Museum of Art in Los Angeles, California from on or about May 5, 2013, until on or about September 2, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 5, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–05652 Filed 3–11–13; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Israel Free Trade Area Implementation Act; Re-Designation of Qualifying Industrial Zones

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Under the United States-Israel Free Trade Area Implementation Act (IFTA Act), articles of qualifying industrial zones (QIZs) encompassing portions of Israel and Jordan or Israel and Egypt are eligible to receive duty-free treatment. Effective upon publication of this notice, the United States Trade Representative, pursuant to authority delegated by the President, is modifying the designation of the previously-designated Al Minya, Alexandria, Beni Suief, Central Delta, Greater Cairo, and Suez Canal zones in Egypt under the IFTA Act to provide that all present and future facilities in these zones are potentially able to export goods duty-free to the United States. This modification would also clarify and, in some cases, adjust the geographic boundaries of the QIZs.

FOR FURTHER INFORMATION CONTACT: Sonia Franceski, Director for Middle East Affairs, (202) 395–4987, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 9 of the United States-Israel Free Trade Area Implementation Act of 1985 (IFTA Act), as amended (19 U.S.C. 2112 note), Presidential Proclamation 6955 of November 13, 1996 (61 FR 58761) proclaimed certain tariff treatment for articles of the West Bank, the Gaza Strip, and qualifying industrial zones. In particular, the Presidential Proclamation modified general notes 3 and 8 of the Harmonized Tariff Schedule of the United States: (a) To provide duty-free treatment to qualifying articles that are the product of the West Bank, the Gaza Strip, or a qualifying industrial zone and are entered in accordance with the provisions of section 9 of the IFTA Act; (b) to provide that articles of Israel may be treated as though they were articles directly shipped from Israel for purposes of the United States-Israel Free Trade Area Agreement ("the Agreement") even if shipped to the United States from the West Bank, the Gaza Strip, or a qualifying industrial zone, if the articles otherwise meet the requirements of the Agreement; and (c) to provide that the cost or value of materials produced in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the cost or value of materials produced in Israel under section 1(c)(i) of Annex 3 of the Agreement and that the direct costs of processing operations performed in the West Bank, the Gaza Strip, or a qualifying industrial zone may be included in the direct costs of processing operations performed in Israel under section 1(c)(ii) of Annex 3 of the Agreement.

Section 9(e) of the IFTA Act defines a "qualifying industrial zone" as an area that "(1) encompasses portions of the territory of Israel and Jordan or Israel and Egypt; (2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and (3) has been specified by the President as a qualifying industrial zone." Presidential Proclamation 6955 delegated to the United States Trade Representative the authority to designate qualifying industrial zones.

The United States Trade Representative has previously designated six qualifying industrial zones in Egypt under Section 9 of the IFTA Act, on March 13, 1998 (63 FR 12572), March 19, 1999 (64 FR 13623), October 15, 1999 (64 FR 56015), October 24, 2000 (65 FR 64472), and December 12, 2000 (65 FR 77688), June 15, 2001 (66 FR 32660) January 28, 2004 (69 FR 4199), December 29, 2004 (69 FR 78094), November 16, 2005 (70 FR 69622) and January 28, 2009 (74 FR 4482). In each of those designations, the USTR designated as qualifying industrial zones the areas occupied by

currently producing factories, as specified on maps and materials submitted by Egypt and Israel.

The governments of Israel and Egypt submitted a request for designation of additional factories in two zones, the Beni Suief and Al Minya zones, on December 5, 2012. Following this request, during consultations in Washington on January 7, 2013, USTR discussed with representatives of Egypt and Israel a proposal to modify the designation of the existing QIZs to provide that all present and future facilities in these zones are potentially able to export goods duty-free to the United States. This modification would also clarify and, in some cases, adjust the geographic boundaries of each of the six existing zones. The geographic boundaries of each the six zones being designated are specified on maps and materials on file with the Office of the U.S. Trade Representative. Israel and Egypt have each confirmed that merchandise may enter, without payment of duty or excise taxes, areas under their respective customs control that comprise the Greater Cairo zone, the Alexandria zone, the Suez Canal zone, the Central Delta zone, the Beni Suief zone and the Al Minya zone, as described in this notice. Further, the operation and administration of these zones are provided for in the previously agreed "Protocol between the Government of the State of Israel and the Government of the Arab Republic of Egypt On Qualifying Industrial Zones." Accordingly, each of the six zones meet the criteria under sections 9(e)(1) and (2) of the IFTA Act.

Therefore, pursuant to the authority delegated to me by Presidential Proclamation 6955, I hereby re-designate the areas that comprise the Al Minya zone, the Alexandria zone, the Beni Suief zone, the Central Delta zone, the Greater Cairo zone, and the Suez Canal zone, as specified on maps and materials on file at the office of the United States Trade Representative, as qualifying industrial zones under section 9 of the IFTA Act, effective upon the date of publication of this notice, applicable to articles shipped from these qualifying industrial zones after such date. This re-designation supersedes any previous designation of these zones.

Ron Kirk,

Ambassador, United States Trade Representative.

[FR Doc. 2013–05657 Filed 3–11–13; 8:45 am]

BILLING CODE 3190–W13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Petitions To Accelerate Tariff Elimination and Modify the Rules of Origin Under the United States-Colombia Trade Promotion Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to file petitions requesting accelerated tariff elimination and changes to the non-textile and non-apparel products rules of origin under the United States-Colombia Trade Promotion Agreement ("the Agreement" or "USCTPA").

SUMMARY: This notice solicits proposals seeking accelerated tariff elimination under the USCTPA as well as proposals on appropriate changes that USTR should consider for modifying the USCTPA's rules of origin under Article 4.14 of the Agreement. This notice also describes the procedures for filing proposals.

DATES: Public comments are due at USTR by close of business, May 13, 2013.

ADDRESSES: *Submissions via on-line: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant USTR for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: Article 2.3.4 of the USCTPA provides that the United States and Colombia may agree to accelerate the elimination of customs duties set out in their respective tariff schedules. Section 201(b) of the United States-Colombia Trade Promotion Agreement Implementation Act ("the TPA Act" or "the Act") authorizes the President to proclaim modifications in the staging of duty treatment set out in the Agreement, subject to the Act's consultation and layover requirements.

The USCTPA requires each government to provide preferential tariff treatment to goods that meet the Agreement's rules of origin. In the United States, those rules are implemented through the TPA Act. Under the Act, goods imported into the United States qualify for preferential treatment if they meet the requirements of the general USCTPA rules of origin set out in section 203 of the Act, and the USCTPA product-specific rules set out in the HTS. The Agreement allows the Parties to amend the Agreement's rules of origin. Section 203(o)(3) of the USCTPA Act authorizes the President to proclaim modifications to the USCTPA's product-specific origin rules, subject to the consultation and layover provisions of section 104 of the Act.

Additional Information: The United States and Colombia have not yet decided whether to accelerate the elimination of tariffs or to make further changes to the Agreement's rules of origin and, if such changes were made, what the scope or extent of such changes should be. The United States and Colombia expect to take into account several factors in considering whether to make such changes, including: (1) The extent that any such changes may reduce transaction and manufacturing costs or increase trade between Colombia and the United States; (2) the feasibility of devising, implementing, and monitoring new rules of origin; and (3) the level and breadth of interest that manufacturers, processors, traders, and consumers in the United States and Colombia express for making particular changes. The United States and Colombia expect to make only those changes that are broadly supported by stakeholders in both countries.

Requirements for Comments/Proposals: Submitters should indicate whether they have discussed their proposals with representatives of the relevant sector in Colombia and, if such discussions have taken place, the result of those discussions. Submissions should indicate whether representatives of the relevant sector in Colombia do not support the proposal. USTR encourages interested parties to consider submitting proposals jointly with interested parties in Colombia.

Scope and Coverage of Proposals: USTR encourages interested parties to review the broadest appropriate range of items and to submit proposals that reflect a consensus reached after such a broad-based review. A single proposal can thus include requests covering multiple tariff headings. Proposals should cover entire 8-digit tariff subheadings, and may also be submitted at the 6, 4, or 2 digit level where the intent is to cover all subsidiary tariff lines.

Requirements for Submissions: Persons submitting written comments must do so in English and must identify (on the first page of the submission) "Colombia TPA Tariff Acceleration," "Colombia TPA Rules of Origin Liberalization," or both. In order to be assured of consideration, comments should be submitted by noon, May 13, 2013.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site.

Comments should be submitted under the following docket: USTR–2013–0017. To find the docket, enter the docket number in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled "Comment Now!" (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment" and attach a file in the "Upload File(s)" field. USTR also prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

A person seeking to request that information contained in a submission from that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. For any comments submitted electronically containing business confidential information, the file name of business confidential version should begin with the characters "BC". Confidential business information must be clearly designated as such. The submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, "BUSINESS CONFIDENTIAL" must be included in the "Type Comment" field. Filers of submissions containing business confidential information must also submit a public version of their comments indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection. The file name of the public version should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the character "P", followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR strongly urges submitters to file comments through *www.regulations.gov*, if at all possible. Any alternative arrangements must be made with Bennett Harman in advance of transmitting a comment. Mr. Harman should be contacted at (202) 395–9446. General information concerning USTR is available at *http://www.ustr.gov*.

Inspection of Submissions: Submissions in response to this notice, except for information granted "business confidential" status, will be available for public viewing at *http://www.regulations.gov*. Such submissions may be viewed by entering the docket number USTR–2013–0017 in the search field at: *http://www.regulations.gov*.

Douglas Bell,

Assistant U.S. Trade Representative for Trade Policy and Economics.

[FR Doc. 2013–05656 Filed 3–11–13; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Aeronautical Land-Use Assurance: Rolla National Airport (VIH), Rolla, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent of Waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal from the City of Rolla (sponsor), Rolla, MO, to release a 10 acre parcel (Lot 1) of land from the federal obligation dedicating it to aeronautical use and to authorize this parcel to be used for revenue-producing, non-aeronautical purposes.

DATES: Comments must be received on or before April 11, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: John Butz, City Administrator, City of Rolla, 901 N. Elm St., Rolla, MO 65401, (573) 426–6948.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106. Telephone number (816) 329–2644, Fax number (816) 329–2611, email address: *lynn.martin@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change approximately 10 acres of airport property at the Rolla National Airport (VIH) from aeronautical use to non-aeronautical for revenue producing use. The parcel of land is located along the Southwest corner of the airport, near Missouri State Highway 28. This parcel will be used for construction and operation of The Brewer Science Building. Brewer Science is a high technology electronics firm that produces products such as anti-reflective coating, lift-off materials, protective coatings, temporary bondings, etc. which is headquartered in Rolla. The firm conducts business around the world with an emphasis in North America, Europe and China.

No airport landside or airside facilities are presently located on this parcel, nor are airport developments contemplated in the future. There is no current use of the surface of the parcel. The parcel will serve as a revenue producing lot with the proposed change from aeronautical to non-aeronautical. The request submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the change to non-aeronautical status of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

The Rolla National Airport (VIH) is proposing the release of one parcel, of 10 acres, more or less from aeronautical to non-aeronautical. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The rental of the subject property will result in the land at the Rolla National Airport (VIH) being changed from aeronautical to nonaeronautical use and release the

lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B) (i) and (iii), the airport will receive fair market rental value for the property. The annual income from rent payments will generate a long-term, revenue-producing stream that will further the Sponsor's obligation under FAA Grant Assurance number 24, to make the Rolla National Airport as financially self-sufficient as possible.

Following is a legal description of the subject airport property at the Rolla National Airport (VIH):

A fractional part of the Southwest Quarter of Section 2, Township 39 North, Range 8 West of the 5th P.M. described as follows: Commencing at the Southwest Corner of said Section 2; thence North 38°25′20″ East, 1062.05 feet to the southeasterly right of way of Missouri Highway 28, being a point left of Station 647+00; thence North 34°35′40″ East, 817.43 feet along said southeasterly right of way to the true point of beginning of the hereinafter described tract; Thence continuing North 34°35′40″ East, 612.29 feet along said southeasterly right of way; thence South 43°54′30″ East, 787.11 feet; thence South 46°06′30″ West, 600.00 feet; thence North 43°54′30″ West, 664.89 feet to the true point of beginning. Above described tract contains 10.00 acres, more or less, per plat of survey J–475, dated June 15, 2012, by Archer-Elgin Surveying and Engineering, LLC.

Any person may inspect, by appointment, the request in person at the FAA office listed above **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Rolla National Airport.

Issued in Kansas City, MO, on February 25, 2013.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2013–05579 Filed 3–11–13; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for Television Sets; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0026]

RIN 1904–AC29

Energy Conservation Program: Test Procedures for Television Sets

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On January 19, 2012, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) in which DOE proposed a new test procedure for television sets (TVs). To address comments in response to the NOPR, DOE conducted additional research and analysis, which is incorporated in today's supplemental notice of proposed rulemaking (SNOPR). DOE also incorporated elements from the draft Consumer Electronics Association (CEA) standard "CEA–2037–A, Determination of Television Average Power Consumption" into the SNOPR. In today's SNOPR, DOE proposes to update the input power requirements in the TVs test procedure NOPR by referencing International Electrotechnical Commission (IEC) Standard 62301 Ed. 2.0, "Household electrical appliances—Measurement of standby power." The SNOPR also proposes to include example accuracy tolerance calculations for light measuring devices (LMD). Additionally, DOE proposes to update the video source input cable hierarchy in the test procedure, as well as specify the TV input terminal for testing. Further, today's SNOPR clarifies TV warm-up and stabilization prior to testing, removes the standby-active, high mode test, includes a test for standby-active, low mode, updates the test order, and provides details for testing TVs shipped with Automatic Brightness Control (ABC) enabled. Finally, today's SNOPR adds rounding requirements to the TV test procedure NOPR that provide guidance for any calculated values used for representation in multiple metric outputs, including an annual energy consumption metric. The multiple metric outputs will also be subject to a sampling plan in today's SNOPR. DOE will hold a public meeting to receive and discuss comments on the proposal.

DATES: DOE will hold a public meeting on April 4, 2013, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking (SNOPR) submitted no later than April 26, 2013. See section V, "Public Participation," for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the Television Set Test Procedure SNOPR, and provide docket number EERE–2010–BT–TP–0026 and/or Regulatory Information Number (RIN) 1904–AC29. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: Televisions-2010-TP-0026@ee.doe.gov.* Include docket number EERE–2010–BT–TP–0026 and/or RIN 1904–AC29 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-TP-0026.* This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9870. Email: *Televisions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

A. General

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012)). Part B [1] of title III of EPCA (42 U.S.C. 6291–6309, as codified) established the "Energy Conservation Program for Consumer Products Other Than Automobiles." The program includes TVs, the subject of today's notice. (42 U.S.C. 6292(a)(12))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures when testing to determine whether the products comply with any relevant standards promulgated under EPCA. For a further description of the basic nature of the program, see section I.A of the TVs test procedure NOPR that DOE published in this rulemaking. 77 FR 2830, 2831 (Jan. 19, 2012) (the January 2012 NOPR).

B. Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EISA 2007 amended EPCA to require DOE to integrate a standby and off mode energy consumption measurement into test procedures where no such measurement is already included, if technically feasible. Otherwise, DOE must prescribe a separate standby and off mode energy test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) DOE recognizes that the standby and off mode conditions of operation apply to TVs.

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

C. Rulemaking Background

DOE adopted a test procedure for TVs on June 29, 1979, codified at 10 CFR part 430, subpart B, Appendix H, 44 FR 37938. In May 2008, the California Energy Commission (CEC) and the Consumer Electronics Association (CEA) each petitioned DOE to repeal this test procedure. CEC's petition stated that the 1979 test procedure was not capable of accurately measuring the energy consumption of modern TVs because TV broadcasting is no longer transmitted via an analog signal. CEA petitioned for DOE's adoption of the International Electrotechnical Commission (IEC) test procedure IEC 62087 Ed. 2.0, "Method of measurement for the power consumption of audio, video and related equipment." 74 FR 53641. DOE agreed that the 1979 test procedure was largely obsolete for today's products and repealed the test procedure on October 20, 2009. 74 FR 53640.

As the first step in establishing a new test procedure for TVs, DOE published a Request for Information on September 3, 2010 (the 2010 RFI) requesting information and views from stakeholders on a range of issues it had identified based on its review of various TV standards and test procedures, including: (1) IEC 62087 Ed. 2.0; (2) the ENERGY STAR Program Requirements for Televisions, Version 4.1 (ENERGY STAR v. 4.1); and (3) CEA's TV test procedure, "Determination of Television Average Power Consumption," CEA–2037 (March 2010). 75 FR 54049. Using the information gathered in the 2010 RFI, DOE issued a TV test procedure NOPR on January 19, 2012, which proposed the adoption of a new TV test procedure to accurately measure the energy consumption of today's TVs. 77 FR 2830 (the January 2012 NOPR). The proposed test procedure was based on updated versions of the IEC, ENERGY STAR and CEA test procedures, namely, IEC 62087 Ed. 3.0, ENERGY STAR v. 5.3, and CEA–2037 (March 2010). In addition, the January 2012 NOPR incorporated by reference certain provisions of IEC 62087 Ed. 3.0 [2] and IEC 62301 Ed. 2.0.[3]

The January 2012 NOPR proposed test procedures for measuring screen luminance and determining power consumption for on mode, standby-passive mode, standby-active, low mode, and off mode. DOE requested written comments on the NOPR and held a public meeting on March 22, 2012.[4] Commenters to the January 2012 NOPR generally supported DOE's proposed approach for determining the luminance and power consumption of TVs but suggested that DOE do its best

[1] For editorial reasons, Part B was redesignated as Part A upon codification in the U.S. Code.

[2] IEC 62087 Ed 3.0 "Method of Measurement of the Power Consumption of Audio, Video, and Related Equipment", April 13, 2011.

[3] IEC 62301 Ed 3.0 "Household Electrical Appliances—Measurement of Standby Power", January 27, 2011.

[4] Public Meeting Transcript, (Last accessed November 30, 2012) <*http://www.regulations.gov/#!documentDetail;D=EERE–2010–BT–TP–0026–0051*>. The material from this Web site is available in Docket #EERE–2010–BT–TP–0026 at regulations.gov.

to use industry-led standards in the creation of its test procedure.

Based on comments received from interested parties on the January 2012 NOPR, additional research and testing performed by DOE, the draft version of CEA 2037–A, Determination of Television Average Power Consumption,[5] and the updated version of ENERGY STAR Program Requirements for Televisions, Version 6.0 (ENERGY STAR v. 6.0), this SNOPR proposes amendments to the following issues:

(1) Method for measuring screen luminance.
(2) Testing multiple illuminance values.
(3) Method for generating illuminance.
(4) The best possible signal source and connection to that signal source.
(5) Stabilization time for luminance and power measurements.
(6) Measuring energy consumption in Download Acquisition mode (DAM).
(7) Measuring power consumption while connected to a network, and
(8) Measuring power consumption on TVs with power saving technologies, such as sensors, display power management systems (DPMS), and high-definition multimedia interface™ with consumer electronic controls (HDMI™).

In addition, this SNOPR proposes sampling and rounding provisions, which were not addressed in the January 2012 NOPR.

For further details on the background of this rulemaking prior to issuance of the January 2012 NOPR, see section I.C of that document, 77 FR 2830, 2821–32.

II. Summary of the Supplemental Notice of Proposed Rulemaking

In today's SNOPR, DOE proposes: (1) To amend the January 2012 NOPR based on comments received from interested parties and data collected by DOE during round robin and other additional testing; and (2) to adopt a metric to calculate the annual energy consumption (AEC) of a TV. DOE notes that comments previously made by stakeholders that are not addressed in today's SNOPR will be addressed by DOE in the final rule.

In the January 2012 NOPR, DOE proposed definitions for "retail picture setting" and "home picture setting." In today's SNOPR, DOE proposes to replace these terms with "brightest-selectable preset picture setting" and "default picture setting", respectively. DOE feels that these new terms will provide clarity for on mode and luminance testing. DOE also proposes to modify the definition of a television set to ensure the scope of coverage clearly differentiates between televisions and displays which are typically used with a computer. Additionally, DOE proposes to include definitions for the following terms, not included in the January 2012 NOPR: "component video", "composite video", "HDMI", "S-video", "special functions", "preset picture settings", and "dark room". DOE believes these additional definitions will provide clarity to the test procedure.

In addition, DOE is proposing to modify the Accuracy and Precision of Measurement Equipment section as well as the Test Conditions section of the January 2012 NOPR. In the NOPR, DOE proposed using a 115 V, 60 Hz input power supply for testing TVs. In today's SNOPR, DOE is proposing to incorporate by reference the power supply requirements specified in section 4.3.1 of IEC 62301 Ed. 2.0 which would allow the DOE test procedure to be more easily adopted by international regulating bodies. DOE also proposes to clarify instrument accuracy requirements by providing examples for calculating light measuring device (LMD) tolerance.

In the January 2012 NOPR, DOE proposed a hierarchy for selecting the video source input cable used for testing TVs. Today, DOE proposes to update that hierarchy by removing Video Graphics Array (VGA) and Digital Visual Interface (DVI) cables. VGA and DVI are typically used as display input video sources, which do not meet the scope of coverage for the proposed test procedure, and are not appropriate for TV testing. DOE is also proposing to add a section to the test procedure which specifies the appropriate input terminal that should be used during testing. Specifying the input terminal connection will help ensure all TVs are connected in the same manner during testing.

Today's SNOPR also proposes to further clarify the TV test procedure by: (1) Updating the stabilization requirements outlined in the January 2012 NOPR; (2) incorporating by reference the stabilization section of IEC 62087 Ed. 3.0; (3) including a test for standby-active, low mode; (4) removing the test for standby-active, high mode; and (5) revising the test order outlined in the January 2012 NOPR.

In the January 2012 NOPR, DOE proposed including a separate test method for TVs with ABC enabled by default. In today's SNOPR, DOE is proposing to provide clarification to the testing of TVs with ABC enabled by default. This SNOPR updates the light source specifications to allow for new lamp[6] requirements based on amended energy conservation standard levels. DOE is specifying the location and set-up of the light source, the illuminance values at which measurements are taken, and the weighting for each measurement when calculating overall on mode power consumption. DOE's proposals in today's SNOPR are based on data collected during round robin and additional testing, as well as public comment received on the January 2012 NOPR. This information, found on regulations.gov,[7] includes the following:

(1) Round Robin Test Report
(2) IR/ND Testing Filter Test Results
(3) Room Testing Conditions Test Results
(4) Analysis of Nielsen Data
(5) Input Terminal Test Results

Today's SNOPR also includes a proposed metric to calculate the AEC of a TV from the rated power consumption in the on, standby, and off modes of operation. The proposed metric combines the rated power consumption values of the TV in the different modes of operation into a single metric based on the expected time spent in each mode of operation such that it is representative of the TV's annual energy use. Providing an approach for calculating AEC will ensure harmonization of reported values across different voluntary, incentive, and State programs applicable to TVs.

Finally, today's SNOPR proposes sampling requirements that must be used to represent power consumption values for on mode, standby-active, low mode and standby-passive mode. DOE is also proposing rounding provisions for these metrics.

The specific amendments proposed in today's SNOPR represent the only changes to the January 2012 NOPR. For the reader's convenience, DOE has reproduced in this SNOPR the entire body of proposed regulatory text from the January 2012 NOPR, amended as appropriate to incorporate today's proposed changes. DOE's supporting analysis and discussion on the portions of the proposed regulatory text not affected by this SNOPR may be found in the January 2012 NOPR, 77 FR 2830.

DOE seeks comments from interested parties on the proposed TV test procedure amendments in today's notice. DOE will consider modifications that improve the accuracy, precision of language, or other elements of the procedure and/or decrease the testing burden. In submitting comments,

[5] CEA's working group initiated a revision to CEA–2037–A on February 28th, 2011; This revision process is still underway.

[6] Lamp is an industry term used for what is commonly referred to outside the television industry as a "light bulb".

[7] This material is available in Docket #EERE–2010–BT–TP–0026 at *http://www.regulations.gov*.

interested parties should state the nature of the recommended modification and explain how it would improve upon the test procedure proposed in this SNOPR. Interested parties should also submit data, if any, to support their positions.

III. Discussion

A. Industry Test Procedures

DOE primarily focused on the draft CEA–2037–A standard, Determination of Television Average Power Consumption, to develop the test procedure for TVs that is proposed in today's SNOPR. The draft CEA–2037–A standard specifies the test conditions and test setup at which power consumption of the TV should be measured. These include the modes of operation of the TV, test room and equipment requirements, and measurement tests for determining the power consumption in each mode of operation. CEA is a leading organization that connects consumer electronics manufacturers, retailers, and other interested parties to develop industry accepted electronics product test procedures. The CEA Technology & Standards program is CEA's standard making body that is accredited by ANSI (American Nation Standards Institute).[8] CEA–2037–A is currently under development in the CEA R4 Video Systems Committee. In response to the January 2012 NOPR, CEA urged DOE to work with the CEA R4 team (CEA, No.47 at p. 6). DOE representatives have observed the development of CEA–2037–A, attended conference call meetings between TV manufacturers and energy advocates discussing draft revisions of the standard, and have been included on all notes and documentation from the CEA R4 WG13 TV Energy Consumption working group. DOE has incorporated elements of the draft CEA–2037–A standard into today's SNOPR.

The CEA–2037–A standard is currently in a 30 day voting period, which is expected to end on March 4, 2013. Once the CEA–2037–A standard is published it will be available on CEA's Web site at *http://www.ce.org/Standards/Standard-Listings.aspx*.

B. Scope of Rulemaking

In the January 2012 NOPR, DOE proposed that a television set be defined as "A product designed to be powered primarily by mains power having a diagonal screen size of fifteen inches or larger that is manufactured with a TV tuner. * * *". 77 FR 2864. However, in the January 2012 NOPR preamble, DOE uses both "*manufactured* with a TV tuner" and "*sold* with a TV tuner" in its discussion of the TVs definition. 77 FR 2836. In response to this inconsistency, Energy Solutions (ES) requested clarification on what DOE meant by "manufactured with" (Public Meeting Transcript, No. 51 at p. 23). In order to eliminate any confusion, DOE is proposing to simplify the definition of TV in the test procedure scope by requiring that the TV tuner is physically incorporated into the TV and removing any mention of the tuner being manufactured or sold with the TV. DOE believes that requiring the TV tuner to be located internal to the TV housing clarifies the scope and definitively separates TVs from displays, as defined in ENERGY STAR v. 6.0.

In addition, within the television set definition, DOE has modified the January 2012 NOPR language of "* * * and that is capable of displaying dynamic visual information * * *" to "* * * and that is capable of displaying dynamic visual content * * *". DOE believes changing "information" to "content" provides a clearer description of a television set's primary function.

The revised definition of a television set, as proposed in today's SNOPR, is "a product designed to be powered primarily by mains power, having a diagonal screen size of fifteen inches or larger, that contains an internal TV tuner encased in a single housing, and that is capable of displaying dynamic visual content from wired or wireless sources including but not limited to: * * *". DOE seeks comment from interested parties on DOE's proposed TV definition, and on whether the revised definition provides sufficient clarity on the TV test procedure scope of coverage (Section V.B.1).

C. Sampling Plan and Rounding Requirement

DOE is proposing the following sampling plan and rounding requirements for TVs to enable manufacturers to make representations of power consumption in the on, standby-active, low, and standby-passive modes of operation. A sampling plan and rounding requirement were not proposed in the January 2012 NOPR, however, DOE believes they will improve consistency of results reported for regulatory and voluntary programs. The represented power consumption values shall be used to calculate the AEC metric, which shall be rounded according to the requirements proposed below. The sampling requirements are included in the proposed section 429.25 of subpart B of 10 CFR part 429.

For consistency with other consumer products regulated under EPCA, DOE is proposing that a minimum of two units of a TV basic model be tested to develop a representative rating, as prescribed in 10 CFR 429.11. However, manufacturers may test more units of a TV basic model, if desired. Additionally, DOE is proposing that any represented power consumption values of a TV basic model shall be greater than or equal to the higher of the mean of the sample or the 95 percent upper confidence limit (UCL) of the true mean divided by 1.05.

The mean of the sample is calculated as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ = the sample mean,
n = the number of samples, and
x_i = the i^{th} sample.

The UCL is calculated as follows:

$$UCL = \bar{x} + t_{0.95}\frac{s}{\sqrt{n}}$$

Where:

$\bar{x}$ = the sample mean
s = the sample standard deviation,
n = the number of samples, and
t_{95} = the t statistic for a 95 percent one-tailed confidence interval with n-1 degrees of freedom.

DOE testing indicates that the on mode power consumption test procedure, for TVs without an ABC sensor or with ABC disabled by default, is repeatable to within one percent. Test procedure repeatability for TVs with ABC enabled by default varies from 0.4 to 3.6 percent, depending on the TV model tested, with an average repeatability of 1.1 percent and a median of 0.6 percent.[9] On mode repeatability is based on testing a unit at multiple test labs and includes test equipment variation. DOE is therefore proposing in today's SNOPR for on mode power consumption, that the UCL value be divided by 1.05 for on mode power consumption to provide a conservative allowance for test procedure variation.[10]

DOE is also proposing a 1.10 divisor for standby mode power consumption and for other power consumption measurements other than on mode. Due to the relatively small power consumption values for standby modes, a small change in tested values can

[8] "ANSI-Accredited Standard Developers." (Last accessed November 30, 2012) (*www.ansi.org/about_ansi/accredited_programs/overview.aspx?menuid=1*).

[9] Round Robin Test Report. (Last accessed February 26, 2013). This material is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[10] Id.

result in significant variation. For instance, standby mode power consumption varied by up to 10 percent for a unit, which included test equipment variation, when tested at multiple labs. Therefore, DOE is proposing that any represented value of standby-active, low mode power consumption and standby-passive mode power consumption, or other power consumption value that is not on mode, of a TV basic model for which consumers would favor lower values shall be greater than or equal to the higher of the mean of the sample or the 90 percent UCL of the true mean divided by 1.10.

DOE is therefore proposing to incorporate this sampling plan into 10 CFR 429.25. DOE requests comment from interested parties regarding its proposed sampling plan for on mode power consumption, which specifies a divisor of 1.05, and for standby mode and other power consumption measurements other than on mode, which specifies a divisor of 1.10 (See Section V.B. 2).

Finally, DOE proposes that only the mean and the UCL of the samples tested shall be rounded, while all calculations to determine the mean and UCL shall be performed with unrounded values. The proposed rounding requirements for the rated power consumption values are included in section 5.3 (Calculation of Average and Rated Power Consumption) of the proposed Appendix H to subpart B of 10 CFR part 430.

Once the rated power consumption values for the on, standby mode, and other power consumption values that are not on mode are calculated and rounded, DOE proposes that these rated values shall be used to calculate the AEC metric. To round the AEC metric from the rated power consumption values, DOE proposes the following: if the AEC is 100 kWh or less, the value shall be rounded to the nearest tenth of a kWh. If the AEC is greater than 100 kWh, the value shall be rounded to the nearest kWh. DOE requests comment on the proposed rounding requirements for representing a TV's on mode, standby mode and other power consumption modes that are not on mode.

D. Definitions

1. General

In the January 2012 NOPR, DOE proposed incorporating definitions for the TV test procedure from IEC 62087 Ed. 3.0 and ENERGY STAR v. 5.3. DOE also proposed new definitions for "home picture setting" and "retail picture setting" for on mode and luminance testing. 77 FR 2830, 2836, 2837. In response to the January 2012 NOPR, Mitsubishi Electric Visual Solutions America (MEVSA) and Sharp recommended including the following terms in the DOE test procedure: "special functions", "preset picture setting", and "dark room". (MEVSA, No. 2 at p. 2; Sharp, No 45 at p. 2) MEVSA also recommended that DOE provide further clarification for dark room conditions. (MEVSA, No. 2 at p. 2) DOE believes that adding definitions for "special functions," "preset picture setting" and "dark room" will provide added clarity to the luminance and on mode tests and DOE is therefore proposing to add such definitions to the test procedure.

Interested parties also indicated that the definition for "retail picture setting" was confusing due to the ambiguity over which modes could be interpreted as the "retail picture setting". Specifically, Sharp, MEVSA, Pacific Gas and Electric Company (PG&E), Northwest Energy Efficiency Alliance (NEEA), and Panasonic noted confusion with the definition and recommended that it be modified. (Sharp, No. 45 at p. 2; MEVSA, No. 44 at p. 5; PG&E, No. 46 at p. 3; NEEA, No. 43 at p. 2; Panasonic, No. 50 at p. 2) Given interested party feedback, and to clarify the test procedure, DOE proposes to remove the "retail picture setting" term and definition from the test procedure and replace it with "brightest-selectable preset picture setting". Similarly, DOE proposes to remove the "home picture setting" term and definition and replace it with "default picture setting". The following sections discuss the modified and additional definitions proposed in today's SNOPR.

2. Definitions Incorporated from IEC 62087 Ed. 3.0

In response to the January 2012 NOPR, Sharp recommended that DOE include the IEC 62087 Ed. 3.0 definition for "special functions". (Sharp, No. 45 at p. 2) Sharp also commented that additional functions should be disabled during testing while special functions should remain in their default configuration (Sharp No. 45 at p. 2). DOE notes that many TVs are now equipped with a variety of "special functions", such as "quick start" power on, ABC, and other power saving features, which are not standard among different manufacturers and models. DOE proposes to define such "special functions" in the TV test procedure as functions that shall remain enabled during testing if they are enabled by default (i.e., if they are enabled as-shipped). This definition is in contrast to DOE's definition for "additional functions", proposed in the January 2012 NOPR, which are to be disabled for testing regardless of their status as-shipped. Incorporating a definition for "special functions" helps to clearly define which functions shall be enabled during testing. DOE believes that the definition for "special functions" from IEC 62087 Ed. 3.0 is appropriate because it is a clear, concise and widely accepted definition. For these reasons, DOE is proposing to incorporate by reference this term, from section 3.1.18 of IEC 62087 Ed. 3.0, in section 2.12 (Special Functions) of Appendix H to subpart B of 10 CFR part 430. Specifically, DOE proposes to define "special functions" as "functions that are related to, but not required for, the basic operation of the device". Additionally, DOE proposes to incorporate the definition for "additional funtions" from section 3.1.1 of IEC 62087 Ed. 3.0 in section 2.1 (Additional Functions) of Appendix H to subpart B of 10 CFR part 430. DOE notes that this definition has not changed from the definition proposed in the January 2012 NOPR, but is incorporated by reference to be consistent with existing industry test procedures. DOE requests comment from interested parties on incorporating by reference the IEC definitions for "additional functions" and "special functions" in today's SNOPR (Section V.B.4).

3. New Definitions

In response to the January 2012 NOPR, Sharp and MEVSA proposed adding definitions for "preset picture setting" and "dark room" respectively. (Sharp, No. 45 at p. 2; MEVSA, No. 44 at p. 3) Additionally, in written comments to the January 2012 NOPR, Sharp commented that an abbreviation for Blu-ray Disc™ should be included. (Sharp, No. 45 at p. 3) Based on interested party feedback, DOE is proposing to define "component video", "composite video", "HDMI", "S-video", "preset picture setting", and "dark room", and add the abbreviation "BD" for Blu-ray Disc in today's SNOPR.

a. Input Connections

In order to further aid in defining the scope of coverage of this rulemaking DOE would like to harmonize its definitions for input connections with other DOE rules such as the set-top box rulemaking published on January 23, 2013, 78 FR 5076. Thus, DOE proposes to include definitions for component video, composite video, HDMI, and S-video in the test procedure. DOE proposes to incorporate by reference two industry standards that are used to

define the component video and HDMI connections. DOE proposes to incorporate by reference CEA–770.3–D, "High Definition TV Analog Component Video Interface" for the definition of component video, and HDMI Specification Version 1.0, "High-Definition Multimedia Interface Specification, Informational Version 1.0" for the definition of HDMI. DOE believes these standards provide the appropriate information for defining the component video and HDMI connections.

b. Dark Room

MEVSA agreed with the testing conditions outlined in the January 2012 NOPR but believes that dark room conditions are underspecified. (MEVSA, No. 44 at p. 2) MEVSA suggested the following dark room definition: "All luminance testing (with a non-contact meter) and on mode testing (with ABC enabled by default) shall be performed in dark room conditions, meaning the display screen illuminance measurement in off mode must be less than or equal to 1.0 lux, and in a room or an enclosure with dark, non-reflective walls." (MEVSA, No. 44 at p. 3) DOE conducted on mode testing while varying room wall color (black, beige) and wall reflectance (fabric, matte paint, glossy paint and white-backed window), while ensuring room illuminance values were less than 1.0 lux at the sensor. DOE observed a difference in power consumption of less than 2 percent with these room variations.[11] Since on mode power measurements and luminance results were minimally impacted by these variations in room conditions, DOE tentatively concludes that specifying a maximum illuminance value of 1.0 lux measured at the TV ABC sensor or bottom of the TV bezel is sufficient for defining a dark room. Including a definition for dark room conditions provides clarity to the test procedure since it may be necessary for the luminance test and on mode test with ABC enabled by default to be performed in a dark room. Given interested party feedback from the January 2012 NOPR, DOE is proposing to define the term dark room in section 2.3 (Dark Room) of Appendix H to subpart B of 10 CFR part 430.

Even though DOE testing indicated that room conditions have a minimal impact on test results, DOE proposes to specify that the ABC sensor remain at least 2 feet from any wall surface (i.e. wall, ceiling, and floor). Maintaining a distance of at least 2 feet away from all wall surfaces increases test set-up repeatability. DOE clarifies that this specification does not include surfaces on which the TV may be placed or the room surface closest to the back of the TV. Additionally, this requirement is only necessary for TV's with ABC sensors enabled by default. DOE requests comment from interested parties on requiring the ABC sensor to be at least 2 feet from any room surface (See Section V.B.5).

c. Picture Settings

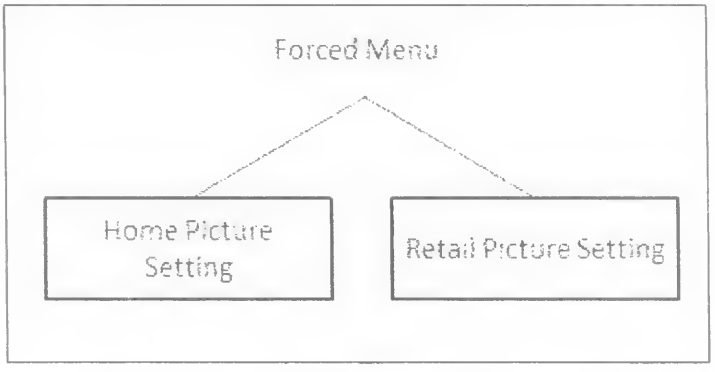
In the January 2012 NOPR, DOE proposed to define "retail picture setting" as the "preset picture setting" in which the TV produces the highest luminance in on mode. 77 FR 2830, 2837. Sharp, MEVSA, PG&E, NEEA, and Panasonic all stated that the term and definition were confusing and proposed alternative definitions or changes to the term.

NEEA stated that DOE should change the definition for "retail picture setting" and could define it as "the mode with the highest brightness level attainable by a factory defined menu option." Otherwise, NEEA recommended changing the term to something other than "retail picture setting". (NEEA, No. 43 at p. 2) MEVSA recommended the following definition: "Retail picture setting is the television configuration when the 'retail' forced menu is selected (if available), or the preset picture setting in which the TV produces the highest luminance during the on mode conditions." (MEVSA, No. 44 at p. 6) PG&E suggested an alternative term, "brightest picture setting, which is the picture setting in which the TV produces the highest luminance during on mode." (PG&E, No. 46 at p. 2) Sharp urged DOE to define "retail picture setting" as "the picture setting which is recommended for retail use by the manufacturer from the initial set up menu." (Sharp, No. 45 at p. 2) Further, Panasonic recommended changing the definition for "retail picture setting" to the following: "Retail picture setting (or the brightest-selectable preset picture setting) is the preset picture setting in which the TV produces the highest luminance during the on mode conditions." (Panasonic, No. 50 at p. 3) Sharp also indicated that manufacturers may have brighter preset settings than the retail picture setting. (Public Meeting Transcript, No. 51 at p. 41)

In *ENERGY STAR v. 6.0*, EPA requires that a forced menu is displayed when the TV is powered on for the first time, providing users with a choice of "home" or "retail" (see Figure 1). Once a consumer chooses the home menu, multiple pre-programmed viewing options are provided, such as "standard", "vivid", "movie", "sports", and "game", which adjust the brightness, contrast and other settings to modify the picture depending on the user's preference. In general, the TV will default to one of the pre-programmed settings once the "home" menu is selected. From the list above, the default setting would likely be the "standard" viewing setting.

[11] Room Testing Conditions Test Results. This report is available in Docket #EERE–2010–BT–TP–0026 at www.*regulations*.gov.

Figure 1: Picture Setting Structure Proposed in the January 2012 NOPR



Since most, if not all, power consumption will occur in the "home" menu for a given TV purchased by a consumer, DOE believes that on mode power consumption values should be representative of the viewing options available from the "home" menu rather than from the "retail" menu. DOE is therefore proposing to remove the definitions for "retail picture setting" and "home picture setting" proposed in the January 2012 NOPR and replace these definitions with the following new terms: "preset picture setting", "brightest-selectable preset picture setting", and "default picture setting". DOE believes these changes clarify the picture settings for testing and provide a more representative power consumption value.

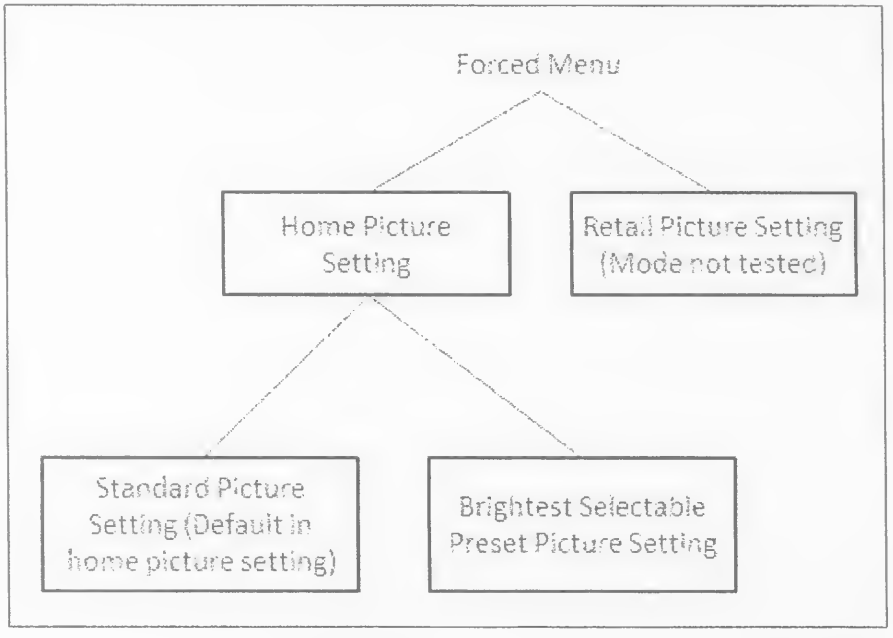
DOE received feedback from the January 2012 NOPR requesting clarification of the term "preset picture setting", as it is used in the definition of "retail picture setting". Neither IEC 62087 Ed. 3.0 nor ENERGY STAR v. 6.0 provide a definition for this term; therefore, DOE proposes to define "preset picture setting" in today's SNOPR. MEVSA and PG&E suggested that DOE clarify what is meant by the term "preset picture setting". (MEVSA, No. 44 at p. 5; PG&E, No. 46 at p. 2) DOE believes that defining "preset picture setting" will improve test repeatability and reproducibility, and minimize confusion when selecting picture settings for on mode and luminance testing. DOE proposes to define "preset picture setting" in section 2.11 (Preset Picture Setting) of Appendix H to subpart B of 10 CFR part 430 as "a pre-programmed factory setting obtained from the TV menu with pre-determined picture parameters such as brightness, contrast, color, sharpness, etc. Preset picture settings are selected within the home menu after the initial set-up selection from the forced menu, if a forced menu is present". DOE requests comment on the need to define "preset picture setting", as well as DOE's proposed definition (Section V.B.6).

Based on comments from interested parties, DOE is proposing to remove the term "retail picture setting" and define "brightest selectable preset picture setting" in section 2.2 (Brightest -selectable preset picture setting) of Appendix H to subpart B of 10 CFR part 430 as "the preset picture setting in which the television produces the highest luminance during on mode". To determine the "brightest selectable preset picture setting", each "preset picture setting" must be tested according to the luminance test in section 5.5 (Luminance Test) of Appendix H to subpart B of 10 CFR part 430. DOE requests comment from interested parties on the use of the term "brightest selectable preset picture setting" and its proposed definition (Section V.B.7).

Although Sharp commented that it agrees with the current definition for "home picture setting" (Sharp, No. 45 at p. 2), DOE no longer feels this term and its associated definition is appropriate given its association with the forced menu requirements in *ENERGY STAR* v. *6.0*. DOE is therefore proposing to remove the term and definition for "home picture setting" and replace it with "default picture setting". DOE proposes to define "default picture setting", in section 2.4 (Default picture setting) of Appendix H to subpart B of 10 CFR part 430, as the picture setting the TV enters into immediately following the selection of the home menu from the forced menu. If the TV does not have a forced menu, the as-shipped picture setting shall be the "default picture setting". DOE requests comment from interested parties on the proposed term, "default picture setting" (Section V.B.8).

DOE believes that the addition of "brightest selectable preset picture setting" and "default picture setting" clarifies how picture settings should be selected and used for testing. Determining the luminance values of the available "preset picture settings" should require little time and is the most definitive way to determine the "brightest selectable preset picture setting" (see figure 1). DOE also believes that excluding any picture settings derived from the "retail" forced menu setting (see figure 2), as specified in *ENERGY STAR* v. *6.0*, will result in representative picture settings for determining on mode power consumption. Figure 2 illustrates the concept of picture settings as proposed in today's SNOPR.

Figure 2: Picture Setting Structure Proposed in Today's SNOPR



E. Testing Conditions and Accuracy and Precision of Measurement Equipment

1. Power Supply Measurements

In the January 2012 NOPR, DOE proposed adopting the IEC 62087 Ed. 3.0 power supply specifications with several modifications. 77 FR 2830, 2838. DOE proposed to limit the input voltage and frequency to 115 V at 60 Hz, rather than including the general requirement that the TV be tested at "the nominal voltage of the region." DOE also proposed restricting the voltage fluctuation supplied to the TV during testing to be within ± 1 percent, rather than the ± 2 percent specified in IEC 62087 Ed. 3.0. 77 FR 2830, 2838.

In response to DOE's proposal, Panasonic recommended adopting IEC 62087 Ed 3.0 Section 5.1.1 (Power Supply) requirements, which specify that the nominal voltage and frequency of the region be used and provide tolerances for voltage, frequency, and harmonics. (Panasonic, No. 50 at p. 2) Although DOE agrees with Panasonic's comments in support of a nominal voltage requirement, DOE is proposing to adopt power specifications from IEC 62301 Ed. 2.0 rather than from IEC 62087 Ed. 3.0. IEC 62301 Ed. 2.0 is consistent with DOE's proposal in the January 2012 NOPR of a voltage and frequency tolerance of ±1% while still specifying the nominal voltage and frequency of the country. This allows the DOE test procedure to be used by other regulating bodies while still specifying the same criteria proposed in the January 2012 NOPR. IEC 62301 Ed. 2.0 also provides a table for the nominal voltage and frequency values by country which is consistent with the NOPR proposal of 115 volts at a frequency of 60 Hz for the United States. This table explicitly states the nominal voltage of the United States to avoid any confusion while listing other regions so the DOE test procedure may easily be adapted by other regions and regulating bodies. DOE proposes to modify section 3.1.1 (Power Supply Requirements) to Appendix H to subpart B of 10 CFR part 430, and incorporate by reference section 4.3.1 (Supply Voltage and Frequency) of IEC 62301 Ed. 2.0.

Additionally, it has come to DOE's attention that the proposed language in the January 2012 NOPR for measuring power factor may be confusing. DOE clarifies that for proposed section 3.1.2.2 to Appendix H to subpart B of 10 CFR part 430, both power factor and real power shall be measured and reported for all on mode tests.

DOE wishes to retain the total harmonic distortion (THD) requirement that was proposed in the January 2012 NOPR as additional clarification to the power supply requirement referenced in IEC 62301 Ed. 2.0. DOE did not receive comment on its proposal and feels that a tolerance of 5% is sufficient without being a test burden.

2. Light Measurement Device

In the January 2012 NOPR, DOE proposed that either a contact or a non-contact Light Measurement Device (LMD) could be used for measuring TV screen luminance. 74 FR 2838–39. DOE believes the January 2012 NOPR proposal may have incorrectly implied that LMD specifications only referred to luminance meters. In this SNOPR, DOE clarifies that LMD specifications are designed to be used for both luminance and illuminance LMDs. DOE also proposed, in the January 2012 NOPR, an accuracy of ±2 percent (±2 digits) of the digitally displayed value, and repeatability within 0.4 percent (±2 digits) of the display value for all LMDs used during the test. 77 FR 2830, 2838–39. PG&E agreed with allowing both a contact and distance luminance meter for measuring screen luminance (PG&E, No. 46 at p. 2), and Sharp agreed with DOE's proposed LMD specifications. (Sharp, No. 45 at p. 3) NEEA urged DOE to clarify the accuracy of the luminance meters in the test procedure. (NEEA, No. 43 at p. 2) MEVSA also asked DOE to provide more clarification on the LMD tolerance specification. (Public Meeting Transcript, No. 51 at p. 29) Given interested party feedback, DOE is proposing to update section 3.1.3 (Light Measurement Device) of Appendix H to subpart B of 10 CFR part 430 by providing examples for calculating LMD tolerance and adding language to clarify the scope of this requirement. However,

DOE has removed the repeatability requirement as it may not be appropriate for all LMDs. DOE seeks comment from interested parties on the clarification of the LMD accuracy requirement and the removal of the LMD repeatability requirement (Section V.B.9).

3. Input Cable

In the January 2012 NOPR, DOE proposed adopting High-Definition Multimedia Interface (HDMI)/Digital Video Interface (DVI), Video Graphics Array (VGA), component video, separate video (S-Video), and composite video input cables for conducting on mode power consumption testing. 77 FR 2830, 2839–40. Panasonic, Sharp, and MEVSA indicated that VGA and DVI inputs should be excluded from TV testing because those formats are designed for displays. Sharp also noted that video input should be tested in the following order: HDMI, Component Analog, S-Video, and Composite Analog. (Sharp, No. 45 at p. 6) MEVSA suggested the following input hierarchy: "Testing shall be performed using an HDMI input. If the TV does not have an HDMI input, the following inputs shall be used in the following order: component, S-Video, and composite. If the TV has none of these inputs, an appropriate interface shall be used." (MEVSA, No. 44 at p. 3) Panasonic commented that VGA and DVI should be excluded from the input hierarchy. (Panasonic, No. 50 at p. 2) NEEA also commented on the input and signal sources, indicating that DOE should align the signal source and generation section with IEC 62087 Ed. 3.0. (NEEA, No. 43 at p. 2) IEC 62087 Ed. 3.0 does not specify a particular input cable or input cable hierarchy, but rather indicates that only one set of input cables be used. DOE believes that specifying a particular hierarchy of input cables will avoid confusion and improve test repeatability.

Given interested party feedback, and that VGA and DVI input cables are specific to displays, DOE is proposing to remove VGA and DVI from section 4.5 (Input Cable) of Appendix H to subpart B of 10 CFR part 430, resulting in the following input cable hierarchy: HDMI, component video, S-video, and composite video. DOE requests comment from interested parties on the proposed input cable hierarchy and the removal of VGA and DVI from this hierarchy (Section V.B.10).

4. Input Terminal

In the January 2012 NOPR, DOE did not propose to specify a particular input terminal when connecting the signal source and the TV. DOE is aware that some TVs have multiple HDMI input terminals designed for specific signal sources such as video game consoles and personal computers. Different input terminals may affect the picture setting the TV assigns to a particular component. For example, an input terminal designed for video game consoles may default to a picture setting designed for video games; this may not be the picture setting designed for typical on mode viewing or with a Blu-ray Disc player. Given that some TVs have multiple input terminals and some of those inputs are not designed for a typical on mode signal source, DOE is proposing to include section 4.6 (Input Terminal) to Appendix H to subpart B of 10 CFR part 430, to specify that the primary input terminal (or any input that maintains the same TV characteristics as the primary input, as specified by the owner's manual) shall be used to conduct testing. Such input terminals are designed to be used with Blu-ray disc players and set-top boxes. DOE requests comment from interested parties on the proposal to perform testing using the primary input terminal (Section V.B.11).

5. Video Input Device

During testing, DOE observed that power consumption differences can arise when the Blu-ray Disc (BD) player used in testing is made by the same manufacturer as the television. DOE has observed that these power consumption differences can be as high as 29.7%, which may result in test procedure reproducibility issues.[12] Since the TV power consumption in on mode can vary significantly based on the BD player used for testing, DOE proposes additional specificity for BD players.

DOE believes that these power consumption differences in the TV arise because TVs and BD players can communicate by utilizing the consumer electronic control function on the HDMI terminal. Consumer electronic control functionality can automatically perform operations for the customer, such as powering on or off the other device, adjusting volume on the TV when the BD player volume is adjusted, or defaulting to a different picture setting. While this functionality can provide a better user experience, DOE observed two situations in which this communication can result in the television automatically changing to a different picture setting when connected to a BD player made by the same manufacturer as the TV. The picture setting and energy consumption differences observed when using different manufacturer BD players with TV1, manufactured by Manufacturer A is shown in Table 1 through Table 4. Although Table 1 shows constant power consumption for TV1 across all BD player manufacturers, BD player A (same manufacturer as TV A) exhibited a proprietary picture setting by default, which was not seen with the other BD players. When the picture setting was changed to the standard picture setting, consistent with the other BD players, DOE observed an average power consumption decrease for TV1 of 21.2% (Table 2). Table 3 shows another TV from manufacturer A, TV2, that also entered the proprietary picture setting when using BD player A, but the power consumption of TV2 was on average 29.7% higher than when using the other BD players. When the picture setting was changed to the standard picture setting seen with the other BD players, the power consumption of TV2 decreased to a value similar to the other players (Table 4). DOE tested both TV1 and TV2 with four BD players made by other manufacturers and did not observe any changes to the picture setting or power consumption. To prevent such interaction between the TV and BD player, DOE is proposing that all TVs shall be tested with a BD player of a different manufacturer than the TV. For example, Manufacturer A's TV may be tested with any BD player other than one manufactured by Manufacturer A.

Additionally, DOE believes that the video input device may interact with the TV in standby modes as well as in on mode. To ensure that no data are transferred between the video input device and the TV, DOE proposes that all video input devices be disconnected from the TV during standby-passive mode and standby-active, low mode testing. DOE requests comment from interested parties on the proposed additional specifications for video input devices (See Section III.E.).

[12] Video Input Terminal Test Results. This report is available in Docket #EERE–2010–BT–TP–0026 at regulations.gov.

TABLE 1—TV1 MANUFACTURER A ON MODE POWER CONSUMPTION MEASURED WITH FIVE BD PLAYERS

TV1—Manufacturer A	Blu-ray disc player manufacturer				
	A	B	C	D	E
Default picture setting	Proprietary	Standard	Standard	Standard	Standard
Power Consumption (W)	50.72	50.72	51.95	51.99	50.82

TABLE 2—TV1 MANUFACTURER A ON MODE POWER CONSUMPTION IN STANDARD PICTURE SETTING

TV1—Manufacturer A	Blu-ray disc player manufacturer				
	A	B	C	D	E
Power Consumption (W)	40.46	50.72	51.95	51.99	50.82

TABLE 3—TV2 MANUFACTURER A ON MODE POWER CONSUMPTION MEASURED WITH FIVE BD PLAYERS

TV2—Manufacturer A	Blu-ray disc player manufacturer				
	A	B	C	D	E
Default picture setting	Proprietary	Standard	Standard	Standard	Standard
Power Consumption (W)	273.5	212.9	209.1	209.9	211.9

TABLE 4—TV2 MANUFACTURER A ON MODE POWER CONSUMPTION IN STANDARD PICTURE SETTING

TV2—Manufacturer A	Blu-ray disc player manufacturer				
	A	B	C	D	E
Power Consumption (W)	209.8	212.9	209.1	209.9	211.9

6. Stabilization

In the January 2012 NOPR, DOE proposed section 5.2 (Warm-up), which included warming up the TV using the IEC 62087 Ed. 3.0 dynamic broadcast-content video signal. 77 FR 2830, 2842–43. In response to this proposal, interested parties indicated that DOE should reference IEC 62087 Ed. 3.0 for stabilization criteria. While Panasonic is in favor of the 2 percent stabilization criteria proposed in the NOPR, they recommended that DOE adopt the stabilization criteria used by IEC 62087 Ed 3.0. This allows the stabilization period to end once the TV has reached the 2 percent stabilization criteria, rather than the mandatory 1 hour period proposed in the January 2012 NOPR for all TVs. (Panasonic, No. 50 at p. 2) Sharp indicated that IEC 62087 Ed. 3.0 should be used for stabilization criteria. (Sharp, No. 45 at p. 3)

DOE believes that it is appropriate to incorporate IEC 62087 Ed. 3.0 Section 11.4.2 (Stabilization) by reference, since it is similar to section 5.2 (Warm-up) which DOE proposed in the January 2012 NOPR. 77 FR 2830, 2842–43. The specifications in IEC 62087 Ed. 3.0 ensure that the TV reaches stabilization, as proposed in the January 2012 NOPR, but it may reduce test time if a TV stabilizes in less than an hour. For this reason, DOE proposes to remove section 5.2 (Warm-up) as proposed in the January 2012 NOPR and replace it with a revised section 5.2 (Stabilization) of Appendix H to subpart B of 10 CFR part 430, which incorporates by reference section 11.4.2 (Stabilization) of IEC 62087 Ed. 3.0. DOE requests comment from interested parties on incorporating by reference the stabilization requirements in section 11.4.2 of IEC 62087 Ed. 3.0 (Section V.B.12).

Additionally, DOE would like to provide guidance for stabilization specifications incorporated from IEC 62087. DOE proposes that the TV stabilization shall be performed in the "default picture setting" and all TVs shipped with the ABC sensor enabled by default shall be stabilized with the ABC sensor enabled. The TV settings are configured in the same manner for on mode testing as they are for the stabilization, in order to decrease the risk that other settings may be modified when enabling or disabling functions or settings. DOE also proposes that at least 300 lux of light shall enter the TV ABC sensor during the stabilization period, allowing the sensor to remain active and engaged. A light level of at least 300 lux shall be applied in accordance with section 5.5 of Appendix H. DOE believes that the TV should be stabilized under the same conditions used during on mode testing. DOE would like to ensure that the TV settings remain in the default picture setting throughout testing. DOE requests comment from interested parties on (1) stabilizing the TV in the default picture setting and (2) stabilizing the TV with the ABC sensor enabled and 300 lux entering the sensor, when the ABC sensor is enabled by default (See Section V.B.14).

7. Test Order

In the January 2012 NOPR, DOE proposed conducting testing in the following order: luminance, on mode, standby mode, and off mode. 77 FR 2830, 2841–42. DOE proposed testing luminance before on mode since "brightest selectable preset picture setting" could have been interpreted as the retail mode from the forced menu, using the definitions in the January 2012 NOPR. Thus, if the on mode test is performed before luminance testing, some TVs may not be capable of being placed into the "retail picture setting" for luminance testing once the TV has been placed in the "home picture setting". To address this potential issue, DOE proposed testing luminance prior to on mode in the January 2012 NOPR.77 FR 2830.

NEEA supported DOE's proposal to test luminance before testing on mode. (NEEA, No. 43 at p. 3) Panasonic urged DOE to place the luminance test after the on mode test as the on mode test may not be as repeatable when it does not immediately follow the stabilization period. (Panasonic, No. 50 at p. 3) Panasonic indicated that if a TV could not switch back to the "retail picture setting" after being in "home picture setting" a revised test procedure could be used that includes an additional stabilization period between the luminance and on mode tests to ensure that it is repeatable. (Panasonic, No. 50 at p. 3) Sharp noted that changing the order of luminance testing might require double testing for products that need to be tested with IEC 62087 Ed. 3.0. (Sharp, No. 45 at p. 3)

As discussed earlier, DOE is proposing to add the defined term "brightest selectable preset picture setting" and remove the definition of "retail picture setting", initially proposed in the January 2012 NOPR. Since the "brightest selectable preset picture setting" can be readily accessed within the home mode from a forced menu, DOE is proposing to revise the test order to the following: on mode, luminance, standby mode, and off mode. This is consistent with the comments received from Panasonic and Sharp and is also consistent with the current test order specified by IEC 62087 Ed. 3.0 and ENERGY STAR v. 6.0. DOE requests comment from interested parties regarding the proposed change to the testing order (Section V.B.12).

The January 2012 NOPR proposed that the luminance test be performed immediately following the initial warm-up period. MEVSA agreed with DOE's proposed warm-up period but suggested that DOE clarify what was meant by "immediately after the warm-up period" to measure the luminance (MEVSA, No. 44 at p. 6). Panasonic suggested that an additional 10 minute warm-up period is needed before each luminance measurement (Panasonic, No. 50 at p. 3). Today's SNOPR proposes that the on mode test follow the initial stabilization period with the luminance test conducted immediately following the on mode test. As discussed in the stabilization section of the SNOPR (Section III.E.5), DOE is proposing to incorporate by reference the requirements in section 11.4.2 (Stabilization) of IEC 62087 Ed. 3.0, which states that the luminance measurement should occur "before the activation of any image retention prevention features". Prior to the January 2012 NOPR, DOE found that stabilizing the TV for any length of time resulted in activation of anti-image retention features and therefore proposed in the January 2012 NOPR that the screen luminance be measured immediately after the TV is warmed-up.[13] Based on a comment received from MEVSA, DOE has revised section 5.5.1 (Luminance Test) in Appendix H to clarify that the luminance test be conducted immediately following the on mode test and the screen shall not be allowed to stabilize. This clarification aligns with the stabilization language incorporated from section 11.5 of IEC 62087 Ed 3.0 which states that measurements "shall be made before the activation of image retention prevention features". DOE requests comment from interested parties on the transition between the on mode power consumption test and the luminance test (Section V.B.16).

F. Automatic Brightness Control Test Set-up

1. General

In the January 2012 NOPR, DOE proposed incorporating a test procedure for TVs with ABC enabled by default. 77 FR 2850. NEEA agreed that TVs with ABC enabled by default should be tested differently than TVs without ABC or without ABC enabled by default. (NEEA No. 8 at p. 4) Appliance Standards Awareness Project (ASAP) supported a robust test procedure that captures the effect of ABC on energy consumption for TVs with ABC enabled by default. (ASAP No. 1 at p. 1) Based on interested party feedback, DOE has maintained its initial proposal to incorporate a test procedure for TVs with ABC enabled by default in today's SNOPR but wishes to modify the specification of this procedure to make it more repeatable and reproducible.

2. Set-up for Generating and Measuring Illuminance

a. Direct Light Source

In the January 2012 NOPR, DOE proposed to evaluate ABC sensor response by directing light from a halogen incandescent lamp into the TV's ABC sensor. 77 FR 2853–54. NEEA supported using a direct light source to generate the illuminance values, as diffused light may not be repeatable. (NEEA No. 9 at p. 5) PG&E agreed with using a direct light source but recommended allowing different lighting types. (PG&E No. 5 at p. 4) Panasonic supported creating illuminance with a direct light source. (Panasonic No. 9 at p. 7) Sharp agreed that halogen incandescent is a proper lamp for ABC testing. (Sharp No. 8 at p. 6) Sharp further suggested directing light into the ABC sensor at an angle that results in the maximum power consumption. (Sharp No. 8 at p. 6) Additionally, National Resource Defense Council (NRDC) recommended that DOE provide clear guidance on how to create the illuminance values. (NRDC, No. 2 at p. 4) While DOE has maintained its proposal to generate illuminance values using a direct light source, DOE proposes to clarify the light source set-up in response to stakeholder comment.

Neither IEC 62087 Ed. 3.0 nor ENERGY STAR v. 5.3 [14] specifies the particular location of the light source with respect to the TV and ABC sensor. DOE recognizes that there are many ways to create direct illuminance and therefore believes that specifying the exact location of the light source will provide a more repeatable test procedure. DOE evaluated two methods for directly illuminating the ABC sensor: a "distance" test set-up and an "adjacent" test set-up. DOE evaluated both of these methods to determine the effect of distance between the light source and ABC sensor and the impact of lamp set-up on TV performance and repeatability. The evaluation consisted of a round robin where four labs performed testing with each method on eight different TVs.[15] Based on this evaluation, DOE is proposing the method outlined by the "distance" test set-up. DOE further explains both test set-ups below, and the results obtained from each.

The "distance" test set-up requires only a light source that is placed at a distance of 5 feet (± 3 inches) from the center of the ABC sensor. The center of the lamp is aligned at the same height as the center of the ABC sensor with respect to the floor, resulting in a perpendicular angle with respect to the center of the sensor. All four corners of the TV face are equidistant from a vertical reference wall (e.g., fixed position room wall). The light source is positioned ensuring the center focal point of the lamp is perpendicular to the center of the ABC sensor, and the vertical reference wall. A side view of the "distance" test set-up is shown in Figure 3; a bird's eye view of the

[13] "Television Luminance Stabilization Period Data. This material is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[14] ENERGY STAR v. 6.0 references the January 2012 NOPR, therefore ENERGY STAR v. 5.3 is being referenced.

[15] Round Robin Test Report. This report is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

"distance" test set-up is shown in Figure 4.

Figure 3. "Distance" Test Set-up (side view)

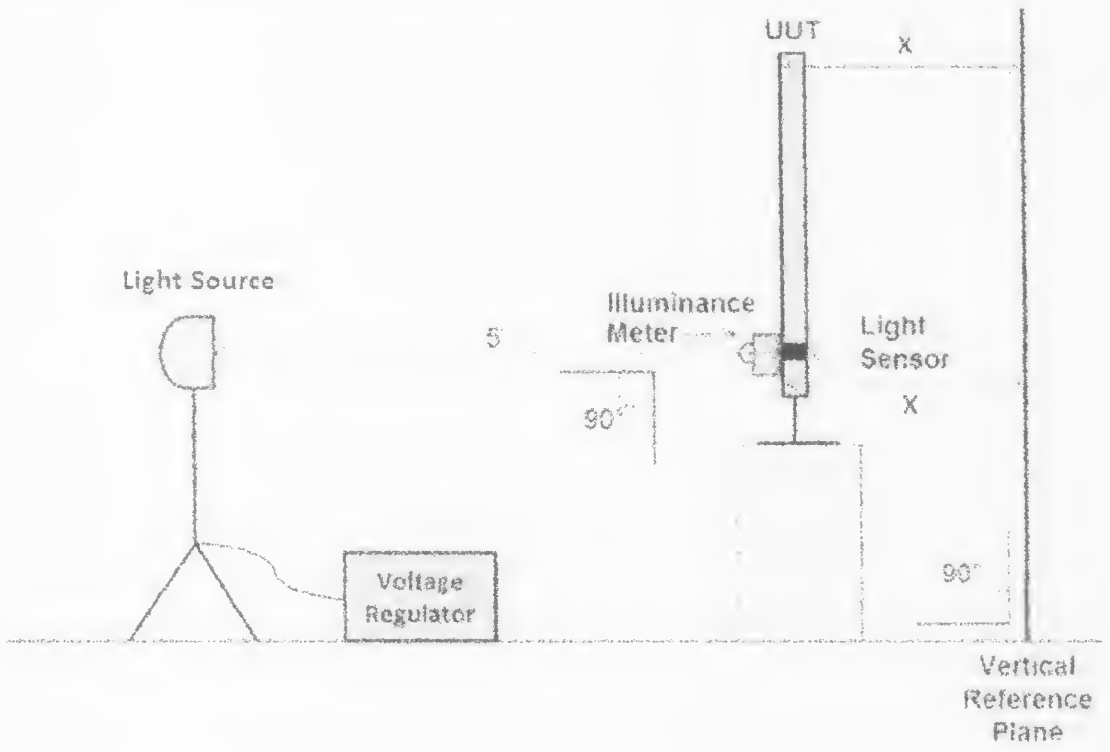
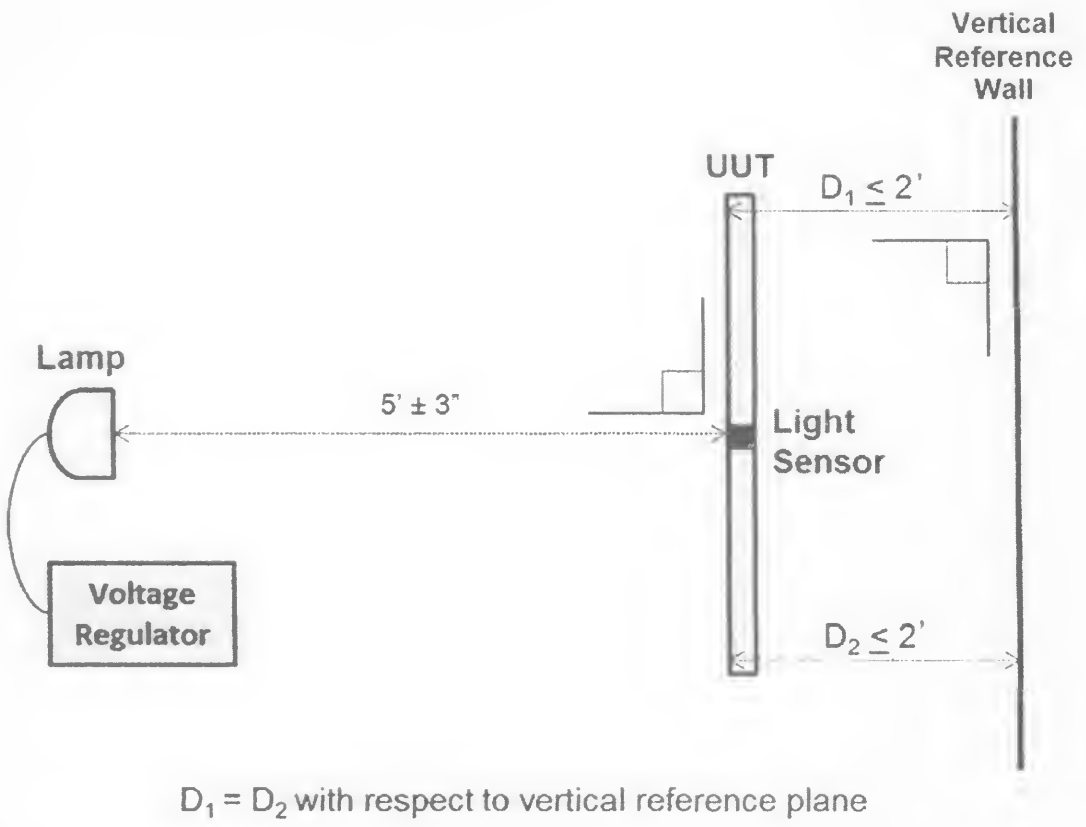
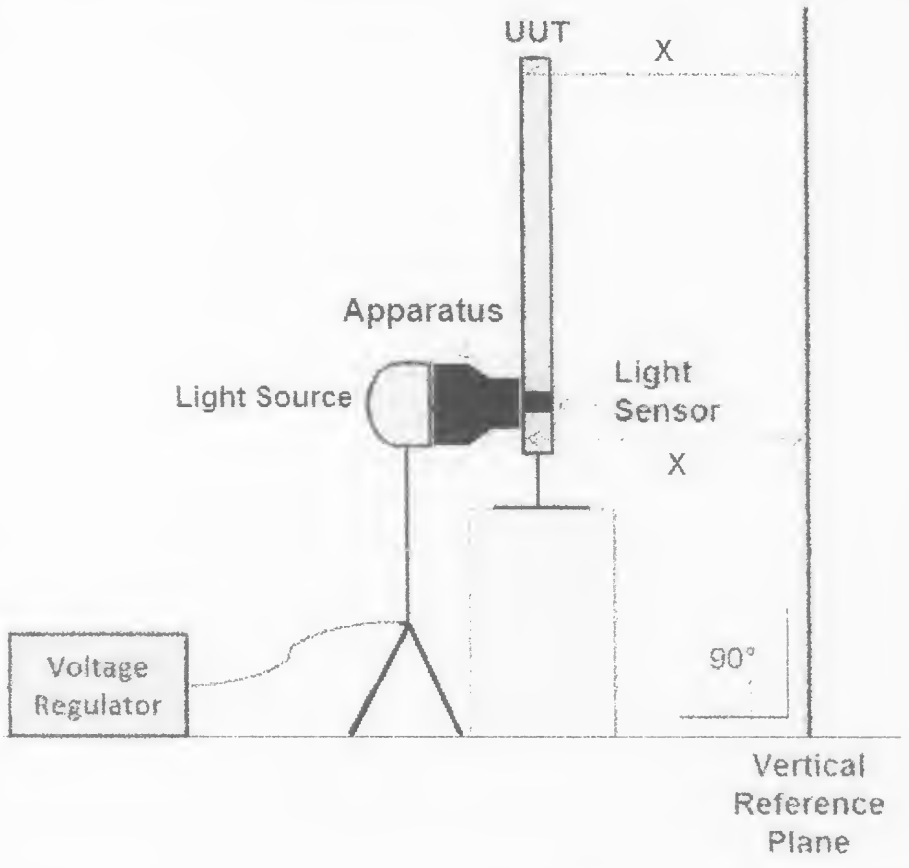


Figure 4. "Distance" Test Set-up (birds eye view)



The "adjacent" test set-up requires a lamp and a cylindrical apparatus with a diameter at one end large enough to fit completely around the lamp and a diameter at the other end of 2 inches. The light source is secured flush against the large diameter end of the apparatus so that no light escapes between the lamp and apparatus. The 2 inch diameter end of the apparatus is then placed flush against the bezel of the TV, completely covering the ABC sensor. The center of the lamp is aligned at the same height as the center of the ABC sensor with respect to the floor, resulting in a perpendicular angle with respect to the center of the sensor. The "adjacent" test set-up is shown in Figure 4.

Figure 5. "Adjacent" Test Set-up



In the January 2012 NOPR DOE proposed using a 100 W halogen incandescent lamp to create illuminance values. While no stakeholders expressed objection to the proposed 100 W halogen incandescent lamp, DOE now has an incandescent reflector lamp efficacy standard in place [16], which affects the halogen incandescent lamp specified in the January 2012 NOPR. As part of this standard, 100W halogen incandescent lamps will be phased out and replaced by higher efficacy lamps. To accommodate these lighting standards, DOE is proposing to use a standard spectrum halogen parabolic aluminized reflector (PAR) short neck lamp with a rated light output of 1000 lumens (± 5 percent). Specifying lumens allows for lamps with a range of wattages to be used for testing, ensuring that lamps meeting the above requirements can be easily obtained. Standard spectrum is any incandescent reflector lamp that does not meet the definition of modified spectrum as defined in 10 CFR 430.2. DOE's proposal allows for lamp efficacy to improve, while retaining the brightness necessary to perform ABC testing on TVs.

b. Lamp Specifications

Both the "distance" and "adjacent" test set-up discussed in the previous section utilized a 1000 lumen PAR 30S halogen incandescent lamp in the round robin testing instead of a 100 W lamp. For both set-ups, target illuminance values are obtained by varying the light source input voltage, with the illuminance measured at the ABC sensor. To compare these test set-ups, DOE conducted round robin testing on eight different TV models at four separate test labs to determine the repeatability and reproducibility of both test set-ups. Each lab tested all eight TVs [17] a total of six times, three times using the "distance" test set-up and three times using the "adjacent" test set-up. Each test comprised measurements taken at multiple illuminance values ranging from 0 to 300 lux.

Analysis of the round robin testing results indicates that the "distance" test set-up provides more repeatable results at the target illuminance values.[18] For this testing DOE selected illuminance values at 0, 10, 12, 35, 50, 75, 100 and 300 lux to test a wide range of values. The power consumption coefficient of variation at each target illuminance value is lower for the "distance" test set-up when comparing results from all four labs for each TV tested. Results also show that TVs exhibit maximum power consumption (saturate) at significantly lower illuminance values, in some cases below 35 lux, with the "adjacent" test set-up. DOE does not believe ABC sensor saturation at these illuminance

[16] Energy conversation standards for Incandescent Relector Lamps, 77 FR 4203, January 31, 2013. *http://www.regulations.gov/#!documentDetail;D=DOE-HQ-2012-0001-0039*

[17] One TV was tested at only three labs as it sustained damage during set-up, prior to testing, at the final lab; DOE did not test this TV since it was not clear how the damage may have affected the TV's performance.

[18] Round Robin Test Report. This report is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

values are representative of actual operation.

c. Infrared Light

During round robin testing, DOE observed different power consumption values for the "distance" and "adjacent" test set-ups when testing at the same illuminance values. To further understand this concept, DOE conducted an investigation which evaluated light intensity as a function of wavelength at multiple illuminance values using the "distance" set-up. The "distance" test set-up requires a greater light intensity output compared to the "adjacent" set-up to compensate for the increased distance from the ABC sensor. Results show that the ratio of infrared (IR) to visible light increased significantly as illuminance values decreased, especially at illuminance values less than 35 lux.[19] To further evaluate the impact of IR on ABC sensor response, DOE used the "distance" test set-up to evaluate the power consumption on multiple TVs while placing a 67 millimeter (mm) diameter IR and ultraviolet (UV) blocking filter over the ABC sensor. DOE then compared power consumption results obtained with the IR/UV blocking filter to the round robin results to better understand how IR and UV light may impact TV sensor response. Results show decreased power consumption when testing with the IR/UV blocking filter regardless of TV or illuminance values.[20] As a lamp is dimmed to simulate lower illuminance values, the IR to visible spectrum ratio is altered and the sensor receives more IR light that may result in higher power consumption. The LMD does not register the increased IR level. The "adjacent" test set-up most likely resulted in higher power consumption due to the increased amount of IR caused by substantially dimming the lamp. Therefore, DOE is proposing to use an IR/UV blocking filter to remove the IR entering the ABC sensor.

DOE is proposing to use a 67 mm diameter IR/UV blocking filter because it is a common size used in photography and can be easily obtained. DOE is proposing to place the filter directly in front of the ABC sensor because it provides a safer, simpler, more repeatable method. Although DOE is proposing to use an IR/UV filter placed in front of the TV's sensor during ABC on mode testing with the "distance" test set-up, DOE is also considering using this test set-up without an IR/UV filter.

d. Summary of Test Set-up

In summary, DOE performed round robin testing to evaluate the repeatability of two test set-ups for specifying the location of the light source in response to interested party feedback requesting detailed instructions on how to generate direct illuminance values. Results show that the "distance" test set-up is more repeatable than the "adjacent" test set-up. Additional testing using an IR/UV blocking filter, with the "distance" test set-up resulted in more realistic ABC sensor responses than when no filter was used. Based on interested party feedback and recent test results, DOE is proposing the following set up requirements for determining on mode power consumption for TVs with ABC enabled by default: (1) Light source shall be a standard spectrum halogen PAR short neck lamp with a rated brightness of 1000 lumens (± 5 percent); (2) lamp assembly shall be set-up using the "distance" test set-up (Figure 3), with the lamp 5 feet (± 3 inches) from the sensor and the center focal point of the lamp perpendicular to the center of the ABC sensor; (3) each corner of the TV face shall be aligned equidistant to a vertical reference wall; (4) all illuminance measurements shall be taken at the ABC sensor; and (5) a 67 mm diameter IR/UV blocking filter shall be placed in front of the ABC sensor in a way that allows no unfiltered light to pass into the sensor during testing. The full round robin test report and additional testing data are provided on regulations.gov.

DOE requests comment from interested parties on each of the five proposed test set-up specifications for determining on mode power consumption for TVs with ABC enabled by default (Section V.B.17).

3. Test Illuminance Values

In the January 2012 NOPR, DOE proposed testing TVs with ABC enabled by default at four distinct illuminance values: 10, 50, 100, and 300 lux. 77 FR 2850–52. ASAP, CEA, MEVSA, NEEA, NRDC, PG&E, and Sharp all agreed that testing should be performed at multiple illuminance values and also proposed specific values at which testing should be done.

ASAP supported testing at four different illuminance values, in particular at both 50 and 100 lux. (ASAP No. 1 at p. 1) Sharp suggested illuminance values of 0, 12, 35, and 300 lux and stated that no testing should be performed at an illuminance level near 100 lux as manufacturers may dim brightness above 100 lux, potentially leading consumers to disable ABC. (Sharp No. 8 at p. 4) NEEA supported DOE's proposed illuminance values of 10, 50, 100, and 300 lux but would prefer testing at 150 lux instead of 100 lux, as 150 lux would act as a better saturation point. (NEEA No. 8 at p. 5–6) NRDC also preferred testing at 150 lux instead of 100 lux. (NRDC No. 2 at p. 3) MEVSA recommended levels of 0, 12, and 300 lux, as "23% of viewership occurs between 0 lux and 6 lux, 70% between 6 and 156 lux, and 7% greater than 156 lux." (MEVSA No. 5 at p. 7) PG&E suggested setting illuminance values at 5, 15, 45, and 135 lux. (PG&E No. 5 at p. 4) Panasonic provided a prioritized list of illuminance values for testing as follows: (1) 0 and 300 lux; (2) 0, 12, and 300 lux; (3) 0, 35, and 300 lux; (4) 0, 12, 35, and 300 lux. (Panasonic No. 8 at p. 5)

In response to the January 2012 NOPR, CEA recommended that the illuminance values for testing should be 0, 12, and 300 lux, with the possibility of an additional point at 35 lux. (CEA No. 5 at p. 5) While multiple interested parties recommended testing at 0 lux, an ambient lighting level of 0 lux is impossible to achieve in practice and is typically achieved in the lab by covering the ABC sensor during testing. NEEA commented that a 0 lux value does not add value to this test since it is not representative of real world conditions. (NEEA, No. 43 at p. 4) ASAP also stated that a 0 lux illuminance value is not representative of real world conditions, but that a value under 10 lux may be appropriate. (ASAP, No. 46 at p. 2) DOE agrees and believes that an illuminance value just above 0 lux should be tested to measure the lowest possible power consumption with ABC enabled and is therefore proposing to test at 3 lux. DOE feels that it is necessary to have another low illuminance value due to the high viewership that takes place under low illuminance conditions. As such, DOE is proposing to also test at 12 lux, which aligns with many industry advocates including CEA, MEVSA, Panasonic and Sharp. (CEA, No. 47 at p. 5; MEVSA, No. 44 at p. 7; Panasonic, No. 50 at p. 5; Sharp, No. 45 at p. 4) DOE proposed testing at the 10 lux value in the January 2012 NOPR; however, since round robin results indicate little difference between power consumption at 10 and 12 lux,[21] and 12 lux aligns with interested

[19] IR/ND Filter Test Results. This report is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[20] Id.

[21] Round Robin Test Report. This report is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

parties' recommendations. DOE is proposing 12 lux in today's SNOPR.

Additionally DOE is proposing 100 lux as a maximum illuminance value. DOE proposed both 150 and 300 lux in the January 2012 NOPR. However, based on DOE's round robin testing,[22] stakeholder feedback to the NOPR, and data from reports like the Collaborative Labeling and Appliance Standards Program (CLASP) study,[23] DOE no longer feels that 150 or 300 are appropriate test values. The CLASP study indicates that the majority of TV viewership occurs when ambient light conditions are between 0 and 100 lux at the ABC sensor and that most TVs reach saturation near the 100 lux value. Testing at 100 lux is also supported by ASAP. (ASAP, No. 46 at p. 1) The CLASP study also reports that 76 percent of viewing occurs at room illuminance values less than or equal to 50 lux.[24] DOE believes that it is important to have an additional illuminance value between 12 and 50 and is therefore proposing to test at 35 lux. CEA, MEVSA, Panasonic, and Sharp all provided comments supporting 35 lux as an illuminance test value. (CEA, No. 47 at p. 5; MEVSA, No. 44 at p. 7; Panasonic, No. 50 at p. 5; Sharp, No. 45 at p. 4) Therefore, DOE is proposing to determine on mode power consumption for TVs with ABC enabled by default at 3 ± 1, 12 ± 1, 35 ± 2, and 100 ± 5 lux.

DOE is also proposing to measure illuminance from the brightest value to the dimmest value. The TV will already be warmed up at brighter levels and specifying the test order will ensure test repeatability. DOE seeks comment from interested parties on the proposed illuminance values and the order in which the values are tested (Section V.B.18).

DOE originally selected the 0 lux illuminance value because it could be easily simulated by completely blocking the sensor. Now that DOE is proposing a 3 lux illuminance point, there may be some measurement equipment accuracy concerns for stakeholders because this 3 lux value is so low. To mitigate some of these concerns for stakeholders, DOE is proposing to allow the 3 lux illuminance value to be simulated with a neutral density (ND) filter. ND filters work by uniformly reducing the light intensity entering the ABC sensor across the full spectrum (both visible and invisible). For example, 12 lux could be measured at the ABC sensor, but when a 2-stop ND filter is placed in front of the sensor, 75% of the light is blocked and the sensor would read 3 lux. This approach was created for labs that may not have illuminance meters capable of accurately reading 3 lux. An ND filter is not required for ABC testing, but may be used to simulate the 3 lux value.

DOE performed testing to verify that similar power consumption values are measured whether or not an ND filter is used when testing at 3 lux. DOE observed that the power consumption in some TVs decreased by as much as 12 percent[25] with the use of an ND filter compared to testing without a filter. DOE believes that by dimming a lamp from 12 lux to 3 lux, the IR to visible spectrum ratio increases and the ABC sensor interprets that it is receiving more visible light than it actually receives. Even though the ND filter is blocking 75% of the light, it does so uniformly across all wavelengths, allowing IR to pass through the filter. To verify this theory, DOE tested ND filters in conjunction with the IR/UV blocking filter and compared the results to testing at 3 lux with the IR/UV blocking filter only. DOE observed a difference of less than 1 percent for all cases and therefore believes that using both filters together would be preferable.[26]

In addition, DOE evaluated illuminance meters that are currently available on the market and found that with the accuracy specified in section 3.1.3 (Light Measurement Device) of the proposed test procedure, LMDs should have the tolerance to accurately measure 3 lux. Although DOE believes that the LMD accuracy specifications are sufficient to accurately measure 3 lux at the ABC sensor, DOE is proposing to allow the option to use a ND filter to obtain 3 lux at the sensor provided that DOE moves forward with its proposal to also require the use of an IR/UV blocking filter. DOE notes that it is only proposing to allow an ND filter when also using an IR/UV blocking filter. DOE seeks comment from interested parties on the use of a ND filter (section V.B.19).

4. Illuminance Weighting Scale

In the January 2012 NOPR, DOE discussed combining the power consumption measured at the four illuminance values using a weighted average, with equal weighting factors to determine ABC power consumption for TVs with ABC enabled by default. 77 FR 2854. DOE ultimately decided not to propose a specific weighting approach in the January 2012 NOPR and requested additional feedback from interested parties.

Sharp, NRDC, and ASAP all agreed with assigning equal weight to the power consumption at each illuminance value. (Sharp No. 45 at p. 6; NRDC No. 40 at p. 3; ASAP No. 46 at p. 2) NEEA preferred that power consumption be reported for each of the four illuminance values instead of reporting an average. However, NEEA suggested weightings of 33 percent, 33 percent, 17 percent, and 17 percent for each of the illuminance values, respectively, if a weighting system were used. (NEEA No. 8 at p. 4–5) Panasonic commented that the higher illuminance values should be weighted less, as viewership occurs less at those levels. (Panasonic No. 8 at p. 5–6) Given that 76 percent of viewership occurs at or below 50 lux, DOE believes that the three lower illuminance values proposed (3, 12, and 35 lux) should comprise the majority of the overall power consumption average. Based on interested party feedback, DOE is proposing to weight each illuminance value equally when calculating a TV's overall power consumption. DOE requests comment from interested parties on equally weighting the illuminance values to determine on mode power consumption for TVs with ABC enabled by default (Section V.B.20).

G. Standby Modes

1. Standby-Passive Mode

In comments to the January 2012 NOPR, NRDC expressed concerns with "quick start" options that may be available on some TVs. NRDC suggested that DOE require network-capable TVs be attached to a live internet connection with "quick start" features enabled and power consumption measured over 15 minutes. (NRDC, No. 40 at p. 4–5) While DOE understands that there may be an increase in power consumption associated with this feature, DOE does not believe the TV needs to be connected to a network for this feature to be active. The additional power consumed is most likely keeping components active to reduce the latency of powering on the TV, rather than downloading content. In addition, DOE believes that "quick start"-type functions would be classified as "special functions". As discussed in Section III.D.2, DOE proposes to incorporate the definition for "special functions" from IEC 62087 Ed. 3.0 by

[22] Id.

[23] Jones, Keith. *Further Analysis of Background Lighting Levels during Television Viewing*. CLASP. March, 29, 2012. *http://www.clasponline.org/en/ResourcesTools/Resources/StandardsLabelingResourceLibrary/2012/Further-Analysis-Background-Lighting-Levels*.

[24] Id.

[25] IR/ND Filter Test Results. This report is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[26] Id.

reference, where "special functions" shall remain enabled during testing if they are enabled by default (i.e., if they are enabled as-shipped). As such, functions such as "quick start" would be tested in the standby-passive mode or standby-active, low test (as proposed below) if they are enabled as-shipped. DOE requests comment from interested parties on testing "quick start" functionality, and if it is adequately covered under the proposed test procedure (Section V.B.21).

2. Standby-Active, Low Mode

In the January 2012 NOPR, DOE discussed potentially testing standby while connected to a network, as standby-active, low mode. DOE ultimately decided not to propose this test in the January 2012 NOPR because testing revealed little to no increase in power consumption when the TV was connected to a network input (e.g. Wi-Fi or Ethernet).[27] However, the ENERGY STAR v. 6.0 TV specifications incorporates a test for standby-active, low mode. To ensure testing consistency between voluntary and State programs applicable to TVs, DOE reconsidered including the standby-active, low mode into its TV test procedure.

In today's SNOPR, DOE is proposing to incorporate the ENERGY STAR v. 6.0 standby-active, low mode test into the DOE test procedure. DOE expects the market share of network-capable TVs to grow,[28] and believes that additional features will be introduced that will increase power consumption in standby-active, low mode. DOE wants to ensure that this increased power consumption is captured during testing. A standby-active, low mode test will measure the power consumption associated with a TV's network capabilities with no data transfer. While this proposed test requires a local area network (LAN) connection, there is no data exchange to and from the TV, so no LAN connection specifications are necessary.

DOE also proposes that standby-active, low mode is tested using a hierarchy of network inputs, as follows: Wi-Fi, Ethernet (if the TV supports an Energy Efficient Ethernet, it shall be tested using that connection), Coax, RJ11 and other. DOE believes that using the aforementioned hierarchy will increase testing repeatability and reproducibility by ensuring that a network-capable TV is tested using the same network connection regardless of who is administering the test. The addition of this test is expected to increase the overall test time by approximately 40 minutes, 30 minutes for stabilizing the TV while in the standby-active, low mode and 10 minutes for measuring the power consumption. The proposed additional testing will add approximately 17 percent to the testing time assuming that each test (on mode, standby-passive mode, standby-active, low mode, and luminance) takes approximately 10 minutes to perform. DOE does not believe that this test adds a significant amount of test burden compared to the entire test procedure proposed for TVs. Including a test to measure the energy consumption associated with standby-active, low mode would allow consumers to understand the increased cost and energy consumption associated with the TV while it is in that mode. Furthermore, including a standby-active, low mode test as part of the TV test procedure will ensure a consistent test set-up that other programs, such as ENERGY STAR, can reference. For these reasons, DOE is proposing to add section 5.6.2 (Standby-Active, Low Mode Test) to Appendix H to subpart B of 10 CFR part 430 to include a standby-active, low mode test that requires the TV be connected to a LAN input while the TV is in standby mode. DOE requests comment from interested parties on the addition of a standby-active, low mode power measurement test in addition to the proposed network hierarchy (Section V.B.22).

3. Standby-Active, High Mode

In the January 2012 NOPR, DOE incorporated several definitions from IEC 62087 Ed. 2.0, including standby-active, high mode. This mode is defined as a period when the TV provides neither audio nor video output, may be switched into another mode by a user initiated input, and is actively exchanging data with an external source. DOE also proposed to adopt the "CEA Procedure for testing DAM: For TVs" (CEA DAM test procedure) [29] to test standby-active, high mode. The CEA DAM test procedure includes two measurement methods: a "practical approach" and an "ideal approach." The practical approach measures the TV's instantaneous power while performing a download. To determine the daily energy consumption (DEC), the instantaneous power value is multiplied by the total duration over which the TV performs downloads in 24 hours. The download duration time must be provided by the manufacturer for each basic model. If a laboratory does not know the download duration time for a given model, the ideal approach must be performed. The ideal approach is a 24 hour test that cycles the TV on and off while measuring the instantaneous power for the entire duration and DEC is reported.

PG&E voiced their support to include the CEA DAM test procedure, but indicated that DOE should clarify that all TVs require DAM testing. (PG&E, No. 46 at p. 5) Panasonic recommended that DOE should include the ENERGY STAR guidance document for the CEA DAM test procedure, which specifies that the test may be performed using the "practical approach". (Panasonic., No. 50 at p. 7)

While DOE proposed to include the CEA DAM test procedure in the January 2012 NOPR, further investigation has revealed that the DAM test requires significant manufacturer involvement during testing. First, laboratories must use a hardware module specific to the make and model of the TV under test. The hardware module must correspond to the preloaded software on the TV in order for data to be sent and received by the TV. It is impossible for the TV to enter into DAM without this external source; however, this approach is not explicitly stated in the CEA DAM test procedure. Second, each manufacturer must specify the workload the hardware module sends to the TV. The CEA DAM test procedure only states that the workload shall be "representative of frequent downloads". Without a specific and consistent workload applied to all tested units, it is likely impossible to obtain a reliable evaluation of a TV's performance in DAM that can be compared to other TVs available on the market.

DOE has also discovered that the CEA DAM test procedure may not be applicable for all network-capable TVs. The CEA DAM test procedure was originally designed to capture the energy associated with hospitality TVs. Hospitality TVs, as defined by ENERGY STAR v. 6.0, operate similarly to a set-top box and frequently receive updates while they are in standby mode. Hospitality TVs are different from many network-capable TVs in that they are designed to communicate with a specific hardware module to update program guide information and download pay-per-view movies. As

[*] Television Internet Standby Data. This material is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[28] Connected TV Shipments to Exceed 138 Million Units in 2015. DisplaySearch, July 5, 2011. *http://www.displaysearch.com/cps/rde/xchg/displaysearch/hs.xsl/110705_connected_tv_shipments_to_exceed_138_million_units_in_2015.asp*.

[29] CEA Procedure for DAM Testing: For TVs. (Last Accessed December 1, 2012) *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/CEA_DAM_Test_Procedure.pdf*.

network-capable TVs have become more prevalent, energy advocates have supported DAM testing on all TVs. However, firmware and application updates, which are the most common downloads for network-capable TVs, are not typically included in the daily energy calculation under the CEA DAM test procedure because they are considered to be infrequent downloads. Section 4 of the CEA DAM test procedure states that if a total download duration is less than 24 hours in a one-year period, it is considered to be an infrequent download and it is not to be included in the daily energy calculation [30]. Finally, even if an internet download were to meet the CEA definition of a frequent download, DOE is not aware of a method for producing a consistent workload that can be used to evaluate all network-capable TVs.

Accordingly, DOE is proposing to remove the reference to the CEA DAM test procedure in today's SNOPR. As discussed above, there are currently no accepted approaches for producing a consistent network workload that could be used to evaluate and compare the power consumption of all TVs when in standby-active, high mode. Therefore, DOE does not plan to specify a test procedure for determining TV power consumption in standby-active, high mode at this time. However, DOE will maintain the proposed definition for standby-active, high mode in section 2.14 (Standby-Active, High Mode) of Appendix H to subpart B of 10 CFR part 430 to help distinguish between all TV standby modes. DOE requests comment from interested parties on the removal of the CEA DAM test procedure, while maintaining a definition for standby-active, high mode (Section V.B. 23).

H. Energy Efficiency Metrics for Televisions

In the January 2012 NOPR, DOE proposed multiple output metrics. These metrics included luminance ratio, on mode power consumption, standby mode power consumption, and off mode power consumption. In addition to proposing multiple output metrics, DOE also requested comment on the energy efficiency metrics in general and, more specifically, including the use of an annual energy consumption metric. 77 FR 2830, 2859. In today's SNOPR, DOE maintains its proposal from the January 2012 NOPR to include metrics for luminace ratio, on mode power consumption and standby mode power consumption, and also proposes a metric to estimate the annual energy consumption.

1. Multiple Output Metrics

CEC, NEEA, NRDC, MEVSA, PG&E, Sharp and Panasonic all indicated that reporting individual metrics is critical. MEVSA commented that a single metric would not be helpful and it would force changes elsewhere in the industry. (MEVSA, No. 44 at p. 7) PG&E urged DOE to require separate power consumption outputs and not a single metric. (PG&E, No. 46 at p. 5) Sharp noted that a single metric would be helpful but reporting on individual modes is critical. (Sharp, No. 45 at p. 7) Panasonic urged for reporting individual metrics. (Panasonic, No. 50 at p. 7) NEEA suggested that the output of the test procedure should be the average power (in watts) of each mode tested. (NEEA, No. 43 at p. 7) NRDC also recommended that the test procedure output the power values in each mode rather than a combined metric. This would allow other policy makers to determine which metrics to include in a calculation of total energy consumption. (NRDC, No. 40 at p. 1) Given interested party feedback, DOE is maintaining multiple output metrics in the test procedure but is proposing that the standby mode power consumption metric be separated into two output metrics: standby-passive mode and standby-active, low mode. DOE also proposes to include an additional metric to the test procedure for calculating annual energy consumption, discussed in Section below.

DOE received additional comments pertaining to the output metrics in general. NRDC noted that the test procedure should output the on mode power consumption associated with both two and three dimensional (2D and 3D, respectively) pictures and allow policy makers to determine how these values would be utilized. (NRDC, No. 40 at p. 6) PG&E voiced their support for DOE to include a power factor measurement as part of the output metric. (PG&E, No. 46 at p. 5) NEEA suggested that the test procedure require reporting the power consumption at each illuminance level, in addition to annual kilowatt-hours. (NEEA, No. 43 at p. 5) NEEA stated that "the use of the power values (in watts) from the television test procedure, while the minimum efficiency ratings are specified in annual kilowatt-hours, would effectively be no different." (NEEA, No. 43 at p. 7)

DOE is proposing to require the following output metrics in the test procedure: luminance ratio, on mode power consumption (watts), standby-passive mode power consumption (watts), standby-active, low mode power consumption (watts), and power factor during testing. DOE is not proposing to include a 3D metric because it does not currently intend to include a 3D on mode power consumption test in the test procedure. DOE is also not proposing to report the power consumption at each illuminance value. DOE feels that it may be confusing for consumers if power consumption was reported at each illuminance. Therefore, DOE believes that it is sufficient to only report the on mode power consumption as a calculated value for TVs with ABC enabled by default.

2. Annual Energy Consumption

In addition to the metric outputs discussed above, DOE is proposing to include an annual energy consumption (AEC) metric, calculated from the test procedure values for on mode, standby modes and off mode power consumption. The AEC uses standard TV viewing hours over a 24 hour period and extrapolates to a yearly kilowatt-hour value. A standard approach for calculating AEC will harmonize different voluntary, incentive, and State programs applicable to TVs.

The proposed equation to calculate annual energy consumption (kWh/year) is:

$$AEC = 365 * (P_{on} * H_{On} + P_{standby\ active,\ low} * H_{standby\ active,\ low} + P_{standby\ Passive} * H_{standby\ passive} + P_{off} * H_{off})/1000$$

Where:

P_m = power measured in a given mode m (in Watts)

H_m = hours per day spent in mode m

365 = conversion factor from daily to yearly

1000 = conversion factor from watts to kilowatts

In the January 2012 NOPR, DOE considered using a similar metric which weighted 7 hours for on mode (typical TV viewing hours represented by H_{on}), 17 hours for standby-passive mode ($H_{standby\ passive}$), and 0 hours for Off Mode (H_{off}). DOE received several comments from interested parties on this proposal. NEEA commented that the biggest issue with generating a single metric is the lack of good data on viewing hours in each mode. (NEEA, No. 43 at p. 7) NEEA believed that a blended average of 5.5 hours (combining the average of primary and non-primary TVs) for on mode energy consumption is more appropriate than the 7 hours suggested in the NOPR. (NEEA, No. 43 at p. 7) Panasonic recommended assigning 5 hours to on mode power consumption to remain consistent with ENERGY STAR and the Federal Trade Commission (FTC); this is also the on mode hours associated with

[30] Id.

a blended average. (Panasonic, No. 50 at p. 8) Sharp indicated that a 7 hour period in on mode is acceptable. (Sharp, No. 45 at p. 7)

Given interested party feedback and DOE's revised analysis of Nielson data of typical TV viewing hours,[31] DOE is proposing to revise the time associated with on mode energy consumption to 5 hours. DOE's revised analysis of the Nielson data indicates that both primary and non-primary TVs average 5 hours in on mode per day, compared to the 7 hours which DOE originally considered in the January 2012 NOPR. While the analysis DOE used in the January 2012 NOPR only included primary TVs, DOE believes that this revised analysis provides a more representative average by using both primary and non-primary TVs.

In today's SNOPR, DOE is also proposing to assign 0 hours to off mode for those TVs equipped with a hard off switch. DOE believes that consumers will not use this mode as it does not allow for powering the TV on using a remote. As such, DOE is proposing to distribute the remaining 19 hours in which the TV is not in on mode among standby-active, low mode and standby-passive mode depending on the features specific to the TV. For TVs that are network-capable, DOE is proposing to assign all 19 remaining hours to standby-active, low mode, as this is the only other power consuming mode.

After publication of the January 2012 NOPR, DOE considered additional weighting criteria for TVs with network connectivity enabled by default, but no longer feels this method is appropriate. The network connection for these TVs needs to be configured before network access is granted and therefore cannot be enabled by default. While this set-up can typically be performed from a menu when the TV is initially powered on, this can take several minutes and frequently offers a skip option. Additionally, this set-up requires information like the wireless access point name and password which are unique to each network connection. Even wired connections that require very little set-up, prompt the user to check the network connection with a connection test prior to completing the network set-up.

DOE believes that most users will connect network-capable TVs, regardless of the set-up required, in order to take advantage of the additional capabilities. However, DOE cannot determine the appropriate hourly average that a network-capable TV spends in standby-active, low mode without market data. Therefore, DOE is assuming that all network-capable TVs will be connected to a network. When placed in standby, any network capable TV will enter standby-active, low mode and not standby-passive mode. Therefore, DOE proposes in today's SNOPR that a network-capable TV will have 19 hours assigned to standby-active, low mode.

In Table 5, DOE has outlined the proposed hourly weightings associated with an AEC metric for each power mode. DOE believes that these values are representative of consumer use, based on data from Nielsen,[32] and will ensure consistent representation of energy usage. DOE requests comment from interested parties on the annual energy consumption metric and its proposed hourly weighting in addition to the other multiple metric outputs discussed above (Section III.H.1).

Proposed values for hourly weightings are summarized in Table 5.

TABLE 5—PROPOSED HOURLY WEIGHTINGS

Network Capable	H_{on}	$H_{standby\_active\_low}$	$H_{standby\_passive}$	H_{off}
Yes	5	19	0	0
No	5	0	19	0

I. Technical Corrections

In section 2.15 (Symbol Usage) of the January 2012 NOPR, DVD was identified as "digital visual disc". After receiving a comment from Sharp indicating that DVD stands for Digital Versatile Disc™ (Sharp, No. 45 at p. 3), DOE proposes to revise section 2.16 (Symbol Usage) of the test procedure to indicate that DVD stands for Digital Versatile Disc™.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 2012 NOPR remain unchanged for this SNOPR. These determinations are set forth in the NOPR, 77 FR 2830, 2859–62. An update to its Review under Section 32 of the Federal Energy Administration Act of 1974, section IV.L of the January 2012 NOPR, is set forth below.

A. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977, (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Today's SNOPR incorporates testing methods contained in the following standards: CEA–770.3–D, High Definition TV Analog Component Video Interface, HDMI Specification Version 1.0, High-Definition Multimedia Interface Specification, and Section 3.1.1, 3.1.18, 11.4.2, and 11.4.5 from International Electrotechnical Commission Standard 62087, *Methods of measurement of the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–05). DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

[31] Analysis of Nielsen Data. This material is available in Docket #EERE–2010–BT–TP–0026 at *www.regulations.gov*.

[32] Id.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www1.eere.energy.gov/buildings/appliance_standards/residential/set_top_boxes.html*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this SNOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable, except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in

PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Television Set Definition—DOE seeks comment from interested parties on DOE's proposed TV definition, and on whether the modified definition provides clarification on the scope of coverage (See Section III.B).

2. Sampling Plan—DOE requests comment from interested parties regarding its proposed sampling plan for on mode power consumption, which specifies a divisor of 1.05, and for standby mode and other power consumption values that are not on mode, which specifies a divisor of 1.10 (See Section III.C).

3. Rounding—DOE requests comment on the proposed rounding requirements for representing a TV's on mode, standby-active, low mode, and standby-passive mode power consumption (See Section III.C).

4. Special Functions—DOE requests comment from interested parties on incorporating by reference the IEC definitions for "additional functions" and "special functions" in today's SNOPR (See Section III.D.2).

5. Distance from Room Surface—DOE requests comment from interested parties on requiring the ABC sensor to be at least 2 feet from any room surfaces (See Section III.D.3.a).

6. Preset Picture Setting—DOE requests comment on adding a definition for "preset picture setting" (See Section III.D.3.c).

7. Brightest Selectable Preset Picture Setting—DOE requests comment from interested parties on discontinuing the use of the term "retail picture setting" and using the term "brightest selectable preset picture setting" and its proposed definition (See Section III.D.3.c).

8. Default Picture Setting—DOE requests comment from interested parties on discontinuing the use of the term "home picture setting" and instead using the proposed term and definition "default picture setting" (See Section III.D.3.c).

9. Light Measurement Devices—DOE seeks comment from interested parties on the clarification for the LMD accuracy requirement and the removal of the LMD repeatability requirement (See Section III.E.2).

10. Video Input Cable—DOE requests comment from interested parties on the proposed input cable hierarchy and the removal of VGA and DVI from this hierarchy (See Section III.E.3).

11. Input Terminal—DOE requests comment from interested parties on the proposal to perform testing using the primary input terminal (See Section III.E.4).

12. Video Input Device—DOE requests comment from interested parties on the additional specifications for video input devices (See Section III.E.5).

13. Stabilization—DOE requests comment from interested parties on incorporating by reference the stabilization requirements in section 11.4.2 of IEC 62087 Ed. 3.0 (See Section III.E.5).

14. Guidance to Stabilization—DOE requests comment from interested parties on stabilizing the TV with the ABC sensor enabled and 300 lux entering the sensor when the ABC sensor is enabled by default (See Section III.E.5).

15. Testing Order—DOE requests comment from interested parties regarding the proposed change to the testing order (See Section III.E.7).

16. Test Transition—DOE requests comment from interested parties on the transition between the on mode power consumption test and the luminance test (See Section III.E.7).

17. ABC Test Set-up—DOE requests comment from interested parties on each of the five proposed test set-up specifications. (1) a 1000 lumen halogen incandescent PAR 30S type lamp shall be used to generate light for testing, (2) the test set-up shall be configured as seen in Figure 3 replicating the "distance" test set-up, (3) all four corners of the TV shall be aligned equidistant to a vertical reference plane, (4) illuminance values shall be measured at the sensor, and (5) a 67mm IR/UV blocking filter shall be placed in front of the ABC sensor to only allow visible light to enter (See Section III.F.2).

18. Illuminance Values—DOE seeks comment from interested parties on the proposed illuminance values of 3 ± 1 lux, 12 ± 1 lux, 35 ± 2 lux, and 100 ± 5 lox (See Section III.F.3).

19. ND Filter—DOE is also proposing the option to use an ND filter to obtain 3 lux. DOE seeks comment from interested parties on the use of an ND filter only with the use of an IR/UV blocking filter (See Section III.F.2.d).

20. Illuminance Value Weighting—DOE requests comment from interested parties on equally weighting the illuminance values to determine on mode power consumption for TVs with ABC enabled (See Section III.F.4).

21. Quick Start—DOE requests comment from interested parties on testing "quick start" functionality and if it is adequately covered under the proposed test procedure (See Section III.G.1III.G.1).

22. Standby-active, low mode—DOE requests comment from interested parties on the addition of a standby-active, low mode power measurement test. DOE also requests comments on the proposed network hierarchy (See Section III.G.2).

23. Standby-active, high mode—DOE requests comment from interested parties on the removal of the CEA DAM test, while maintaining a definition for standby-active, high mode (See Section III.G.3).

24. Energy Efficiency Metrics—DOE requests comment from interested parties on the multiple metric outputs (see Section III.I.1), including the annual energy consumption metric. DOE also requests comment on its proposed hourly weighting for the annual energy consumption metric (See Section III.I.2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household

appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on February 28, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of chapter II of title 10, subchapter D of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.25 is added to read as follows:

§ 429.25 Television sets.

(a) *Sampling plan for selection of units for testing.*

(1) The requirements of § 429.11 are applicable to televisions; and

(2) For each basic model of television, samples shall be randomly selected and tested to ensure that—

(i) Any represented value of power consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\overline{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample;

Or,

(B) For on mode power consumption, the upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \overline{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A of this subpart).

And

(C) For standby mode power consumption and power consumption measurements in modes other than on mode, the upper 90 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \overline{x} + t_{0.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A of this subpart).

(ii) [Reserved]

(b) [Reserved]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by:

■ a. Removing the definitions "Color television set" and "Monochrome television set";

■ b. Adding the definitions "Component Video", "Composite Video", "Direct Video", "High-Definition Multimedia Interface", and "S-Video"; and

■ c. Revising the definition for "Television set".

The additions and revisions read as follows:

§ 430.2 Definitions.

* * * * *

Component Video means a video display interface that meets the specification in CEA–770.3–D (incorporated by reference; see § 430.3).

Composite Video means a video display interface that uses a Radio Corporation of America (RCA) connection to transmit National Television System Committee (NTSC) analog video.

* * * * *

Direct video connection means any connection type that is one of the following: High-Definition Multimedia Interface (HDMI), Component Video, S-Video, Composite Video, or any other video interface that may be used to output video content.

* * * * *

High-Definition Multimedia Interface or HDMI means an audio/video interface that meets the specification in HDMI Specification Version 1.0 (incorporated by reference; see § 430.3).

* * * * *

S-Video means a video display interface that transmits analog video over two channels: luminance and color.

* * * * *

Television set (also referred to as "TV") means a product designed to be powered primarily by mains power, having a diagonal screen size of fifteen inches or larger, that contains an internal TV tuner encased in a single housing, and that is capable of displaying dynamic visual content from wired or wireless sources including but not limited to:

(1) Broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission of analog and/or digital signals; and/or

(2) Display-specific data connections, such as HDMI, Component Video, S-Video, Composite Video; and/or

(3) Media storage devices such as a USB flash drive, memory card, or a DVD; and/or

(4) Network connections, usually using Internet Protocol, typically carried over Ethernet or Wi-Fi.

A TV may contain, but is not limited to, one of the following display technologies: liquid crystal display (LCD), organic light-emitting diode (OLED), cathode ray tube (CRT), or plasma display panel (PDP). TV also includes TV Combination units that DOE has further defined in Appendix H to subpart B of this part.

* * * * *

■ 5. Section 430.3 is amended by:

■ a. Redesignating paragraphs (i) through (k) as (j) through (l), and (l) through (p) as (n) through (r), respectively;

■ b. Further redesignating newly designated paragraphs (o)(1) and (2) as (o)(2) and (3), respectively;

■ c. Adding paragraphs (i), (m) and (o)(1);

■ d. Amending newly designated paragraph (o)(2) by adding "appendix H" after "appendix F";

■ e. Amending newly designated paragraph (o)(3) by adding "H," after "G,";

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(i) *CEA.* Consumer Electronics Association, Technology & Standards Department, 1919 S. Eads Street, Arlington, VA 22202, 703–907–7600, or go to *www.CE.org.*

(1) CEA–770.3–D, High Definition TV Analog Component Video Interface, approved February 2008; IBR approved for § 430.2.

(2) [Reserved]

* * * * *

(m) *HDMI.* High-Definition Multimedia Interface Licensing, LLC, 1140 East Arques Avenue, Suite 100, Sunnyvale, CA 94085, 408–616–1542, or go to *www.hdmi.org.*

(1) HDMI Specification Version 1.0, High-Definition Multimedia Interface Specification, Informational Version 1.0, approved September 4, 2003; IBR approved for § 430.2.

(2) [Reserved]

* * * * *

(o) *IEC.* * * *

(1) International Electrotechnical Commission (IEC) Standard 62087, ("IEC 62087 Ed. 3.0"), *Methods of measurement of the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–05), Section 3.1.1, 3.1.18, 11.4.2, 11.4.5, 11.5.5, 11.5.6, and 11.6 and annex c.3, IBR approved for Appendix H to subpart B.

* * * * *

■ 6. Section 430.23 is amended by adding paragraph (h) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(h) *Television Sets.* The power consumption of a television set, expressed in watts, including on mode, standby-active low mode, and standby-passive mode power consumption values, shall be measured in accordance with section 5 of Appendix H of this subpart.

* * * * *

■ 7. Appendix H to subpart B of part 430 is added to read as follows:

Appendix H to Subpart B of Part 430—Uniform Test Method for Measuring the Power Consumption of Television Sets

1. Scope

This appendix covers the test requirements used to measure the power consumption of television sets.

2. Definitions and Symbols

2.1. *Additional functions* shall be defined using the additional functions definition in section 3.1.1 of IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3).

2.2. *Brightest selectable preset picture setting* is the preset picture setting in which the television produces the highest luminance during on mode conditions.

2.3. *Dark room* is the condition when the room illuminance at the automatic brightness control sensor measures less than or equal to 1.0 lux while the TV is in off mode or standby-passive mode.

2.4. *Default picture setting* is the preset picture setting that the TV enters into immediately after selecting the home menu from the forced menu. If the TV does not have a forced menu, this is the as-shipped preset picture setting.

2.5. *IEC 62087 Ed. 3.0* means the test standard published by the International Electrotechnical Commission, entitled "Methods of measurement of the power consumption of audio, video, and related equipment," IEC 62087 Ed. 3.0.

2.6. *IEC 62087 Ed. 3.0 Blu-ray Disc™ Dynamic Broadcast-Content Video Signal* means the test clip published by the International Electrotechnical Commission, entitled "IEC 62087 Ed. 3.0, video content BD, video content for IEC 62087 Ed. 3.0 on Blu-ray Disc," IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3).

2.7. *IEC 62301 Ed. 2.0* means the test standard published by the International Electrotechnical Commission, entitled "Household electrical appliances—Measurement of standby power," IEC 62301 Ed. 2.0 (incorporated by reference, see § 430.3).

2.8. *Luminance* is the photometric measure of the luminous intensity per unit area of light traveling in a given direction, expressed in units of candelas per square meter (cd/m^2).

2.9. *Off mode* is the power mode where the TV is connected to a power source, produces neither sound nor picture and cannot be switched into any other mode with the remote control unit, an external or internal signal.

2.10. *On mode* is the power mode in which the TV is connected to a mains power source, has been activated, and is providing one or more of its principal functions.

2.11. *Preset picture setting* is a pre-programmed factory setting obtained from the TV menu with pre-determined picture parameters such as brightness, contrast, color, sharpness, etc. Preset picture settings are selected within the home menu after the initial set-up selection from the forced menu if a forced menu is present.

2.12. *Special functions* shall be defined using the definition in section 3.1.18 of IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3).

2.13. *Standby-passive mode* is the power mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal.

2.14. *Standby-active, high mode* is the power mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal, and with an external signal, and is exchanging/receiving data with/from an external source.

2.15. *Standby-active, low mode* is the power mode in which the TV is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or an internal signal and can additionally be switched into another mode with an external signal.

2.16. *Symbol usage.* The following identity relationships are provided to help clarify the symbols used throughout this test procedure.

ABC—Automatic Brightness Control
BD—Blu-ray Disc™
DVD—Digital Versatile Disc™
DVI—Digital Visual Interface
HDD—Hard Disk Drive
HDMI—High Definition Multimedia Interface
IR—Infrared
$L_{brightest}$—Luminance of TV in brightest selectable preset picture setting
$L_{default}$—Luminance of TV in default picture setting
L_n—Ratio of $L_{default}$ to $L_{brightest}$
LMD—Light Measurement Device
LAN—Local Area Network
ND—Neutral Density (Filter)
P_{off}—Power consumed in on mode with ABC disabled
P_3—Average power consumed in on mode, ABC enabled, 3 lux, with a direct light source
P_{12}—Average power consumed in on mode, ABC enabled, 12 lux, with a direct light source
P_{35}—Average power consumed in on mode, ABC enabled, 35 lux, with a direct light source
P_{100}—Average power consumed in on mode, ABC enabled, 100 lux, with a direct light source
$P_{standby\_passive}$—Power consumption in standby-passive mode
$P_{standby\_active,\ low}$—Power consumption in standby-active, low mode
P_{off}—Power consumption in off mode
THD—Total Harmonic Distortion
TV—Television Set
UCL—Upper Confidence Level
USB—Universal Serial Bus
UV—Ultraviolet
VCR—Videocassette Recorder
W_3—Percent weighting for on mode, ABC enabled, 3 lux
W_{12}—Percent weighting for on mode, ABC enabled, 12 lux
W_{35}—Percent weighting for on mode, ABC enabled, 35 lux
W_{100}—Percent weighting for on mode, ABC enabled, 100 lux
WAN—Wide Area Network

2.17. *TV combination unit* is a TV in which the TV and one or more additional devices (e.g., DVD player, Blu-ray Disc™ (BD) player, Hard Disk Drive) are combined into a single enclosure, and which meets the following criteria: (a) it is not possible to measure the power of the individual components without removing the product housing; and (b) the product connects to a wall outlet via a single power cord.

3. *Accuracy and Precision of Measurement Equipment*

3.1. *Electrical Power Supply*

3.1.1. *Power Supply Requirements.* The TV power use shall be measured using a power supply that meets the specifications found in section 4.3.1. (Power Supply) of IEC 62301 Ed. 2.0 (incorporated by reference, see § 430.3). The THD of the supply voltage shall not exceed 5%, inclusive to the 13th order harmonic, when the unit is under test.

3.1.2. *Power Meter Requirements.* The power measurement shall be carried out directly by means of a wattmeter, a wattmeter with averaging function, or a watt-hour meter, by dividing the reading by the

measuring time. For TVs where the input video signal varies over time, use a wattmeter with an averaging function to carry out the measurement.

3.1.2.1. The sampling rate of the watt-hour meter or wattmeter with averaging function shall be one measurement per second or more frequent.

3.1.2.2. The power measurement instrument shall measure and record the power factor and the real power consumed during all on mode tests.

3.1.2.3. Power measurements of 0.5 W or greater shall be made with an uncertainty of less than or equal to 2 percent (at the 95 percent confidence level). Measurements of power of less than 0.5 W shall be made with an uncertainty of less than or equal to 0.01 W (at the 95 percent confidence level). The power measurement instrument shall have a resolution of:

0.01 W or better for power measurements of 10 W or less;

0.1 W or better for power measurements of greater than 10 W up to 100 W;

1 W or better for power measurements of greater than 100 W.

3.1.3. *Light Measurement Device.* All LMDs shall have an accuracy of ±2 percent ±2 digits of the digitally displayed value. Luminance meters shall also have an acceptance angle of 3 degrees or less. This specification covers all types of luminance meters, both contact and non-contact, as well as illuminance meters.

Example 1: If the LMD displays "300", then 2 percent is ±6 cd/m². The least significant digit is the tenths place, which adds an additional ±2 cd/m² to the overall tolerance. Therefore, the accuracy of the LMD at "300" must be within ±8 cd/m².

Example 2: If the LMD displays "10.00", then 2 percent is ±0.2 cd/m². The least significant digit is the hundreds place, which adds an additional ±0.02 cd/m² to the overall tolerance. Therefore, the accuracy of the LMD at "10.00" must be within ±0.22 cd/m².

4. *Test Room and Set-up Criteria.*

4.1. *Additional Functions.* The TV shall be set up according to the requirements in IEC 62087 Ed. 3.0 section 11.4.5. Additional functions (incorporated by reference, see § 430.3).

4.2. *Ambient Temperature Conditions.* For all testing, maintain ambient temperature conditions between 23 °C ± 5 °C.

4.3. *Ambient Relative Humidity Conditions.* For all testing, maintain the ambient relative humidity between 10 and 80 percent.

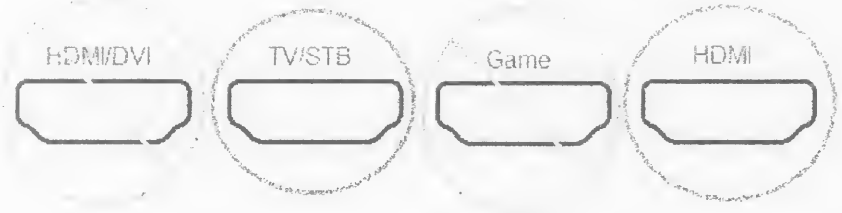
4.4. *Luminance Conditions.* All luminance testing (with a non-contact meter) and on mode testing (with ABC enabled by default) shall be performed in a Dark Room.

4.5. *Input Cable.* Testing shall be performed using a HDMI input cable. If the TV does not have a HDMI input, the following inputs shall be used, in the following order: Component Video, S-Video, and Composite Video.

4.6. *Input Terminal.* If the TV has multiple input terminals of the same type (i.e. HDMI 1, HDMI 2), testing shall be performed using any input terminal designed for viewing live TV or dynamic content from a BD player or set-top box.

Example 1: All acceptable input terminals to use for testing

Example 2: Only TV/STB and HDMI are acceptable input terminals for testing



4.7. *Input Voltage and Frequency.* Select the voltage frequency that is in accordance with the nominal voltage frequency of the region.

4.8. *Installation.* Install the TV in accordance with manufacturer's instructions.

4.9. *Special Functions.* The TV shall be set up according to the requirements in IEC 62087 Ed. 3.0 section 11.4.6. Special functions (incorporated by reference, see § 430.3).

4.10. *TV Placement.* TVs which have an ABC sensor enabled by default shall measure at least 2 feet away from any wall surface (i.e. wall, ceiling, and floor). This does not include the furnishings which the TV may be placed on or the wall which the back of the TV faces. All four corners of the face of the TV shall be placed equidistant from a vertical reference plane (e.g. wall).

5. *2D Testing Signal Source.* The signal source shall be able to generate a Blu-ray signal.

5.1. *Video Input Device.* The video input device (i.e. Blu-ray Disc player) manufacturer shall be different from the manufacturer of the TV under test to prevent device interaction.

5.2. *Test Measurements.* For on mode and luminance testing, connect the signal source generator to the TV via the input cable.

5.3. *Stabilization.* The TV shall be stabilized prior to testing using section 11.4.2 of IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3). If the TV has an ABC sensor enabled by default, direct 300 lux or greater into the ABC sensor in accordance with sections 5.4.2, 5.4.3, and 5.4.4.

5.4. *Calculation of Average Rated Power Consumption.*

5.4.1. For all tests in the on, standby-active, low, and standby-passive modes, the average power shall be calculated using one of the following two methods:

5.4.1.1. Record the accumulated energy (Ei) in kilo-watt hours (kWh) consumed over the time period specified for each test (Ti). The average power consumption is calculated as Pi = Ei/Ti.

5.4.1.2. Record the average power consumption (Pi) by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test (Ti).

5.4.2. The rated power consumption in the on, standby, and off modes shall be determined as follows:

5.4.2.1. Apply the sampling and statistical requirements described in 10 CFR 429.25 to the average power consumption values of each mode of operation.

5.4.2.2. The resulting rated power consumption value for each mode of operation shall be rounded according to the accuracy requirements specified in section 3.1.2.3.

5.5. *On Mode Test for TVs without ABC Enabled By Default.*

5.5.1. *General Measurement Procedure for On Mode.* On mode power consumption shall be tested under the conditions outlined in section 11.4 of IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3).

5.5.2. *Testing.* On mode testing shall be performed with the TV in its "default picture setting" while displaying the full 10-minute duration of IEC 62087 Ed. 3.0 Blu-ray Disc™ dynamic broadcast-content video signal (incorporated by reference, see § 430.3). Measure the instantaneous power and record the average value over the test duration as P_{on}.

5.6. *On mode Test for TVs with ABC Enabled By Default.* The following test shall be performed if the TV is shipped with ABC enabled by default:

5.6.1. *Illuminance Values.* On mode testing shall be performed with the TV in its "default picture setting", while displaying IEC 62087 Ed. 3.0 Blu-ray Disc™ dynamic broadcast-content video signal for one 10 minute interval (incorporated by reference, see § 430.3) with 100 lux (± 5 lux) entering the ABC sensor. Measure the instantaneous power consumption and record the average value over the test duration as P_{100}. Repeat the measurements with 35 lux (± 2 lux), 12 lux (± 1 lux), and 3 lux (± 1 lux) entering the ambient light sensor and record the values as P_{35}, P_{12}, and P_3 respectively. Testing shall be performed from brightest to dimmest room illuminance and values shall be changed by varying the input voltage to the light source.

5.6.2. *On Mode Power Calculation.* All illuminance values shall be weighted equally when calculating the on mode power for a TV with ABC enabled by default and shall be determined by the following equation:

$$P_{on} = P_{100} * W_{100} + P_{35} * W_{35} + P_{12} * W_{12} + P_3 * W_3$$

Where

$$W_{100} = W_{35} = W_{12} = W_3 = 0.25$$

5.6.3. *Lamp Requirements.* A 1000 lumen (± 5%) standard spectrum PAR 30S halogen incandescent lamp shall be positioned in front of the ABC sensor so that the light is directed into the sensor. A 67 mm infrared and ultraviolet light blocking filter shall be placed over the ABC sensor ensuring that only filtered light reaches the ABC sensor.

5.6.4. *Light Source Set-up.* The center of the lamp shall measure 5 feet (± 3 inches) from the center of the ABC sensor. The light source shall be aligned ensuring that the center focal point of the lamp is perpendicular with the center of the ABC sensor.

5.6.5. *Illuminance Measurement.* The room illuminance shall be measured at the sensor in the direction of the light source while the TV is on and displaying the first menu from the IEC 62087 Ed. 3.0 annex c.3.

5.6.6. *Neutral Density Filter.* A neutral density (ND) filter is allowed as an optional method for creating the 3 lux illuminance value. The ND filter shall be placed on top of the IR/UV blocking filter and shall be appropriately calibrated to allow 3 lux to enter the ABC sensor.

Example: A 2-stop ND filter uniformly blocks 75% of the light from entering the ABC sensor. For an ABC sensor to receive 3 lux, 12 lux of light needs to reach the sensor prior to applying the ND filter. After applying the ND filter the TV will only interpret 3 lux of light entering the sensor.

5.7. *Luminance Test.*

5.7.1. *Luminance Test.* The luminance test shall be performed immediately following the on mode test prior to the activation of anti-image retention features. The luminance test shall first be performed with the TV in the "brightest selectable preset picture setting", followed by the TV in the "default picture setting". The "brightest selectable preset picture setting" shall be determined using the Three Bar Video Signal Measurement in section 5.5.1.2. The ABC sensor must be disabled during this test.

5.7.1.1. *Luminance Meter Set-up.* Align the LMD perpendicular to the center of the TV screen. If a non-contact meter is being used for testing, the LMD shall be at a distance capable of achieving the specifications outlined in section 3.1.3.

5.7.1.2. *Three Bar Video Signal Measurement.* The TV luminance shall be measured in both the "default picture setting" and "brightest-selectable preset picture setting" using the IEC 62087 Ed. 3.0 Three Bar Video signal found in section 11.5.5 of IEC 62087 Ed. 3.0 (incorporated by reference, see § 430.3). Record the luminance immediately after the Three Bar Video signal is displayed in the "brightest-selectable preset picture setting", as $L_{brightest}$, followed by the "default picture setting", as $L_{default}$.

5.7.1.3. *Luminance Ratio Calculation.* Calculate the Luminance ratio, L, as the ratio of $L_{default}$ to $L_{brightest}$.

5.8. *Standby Mode Tests.*

5.8.1. *Video Input Device. The video input device shall be disconnected from the TV during standby-passive mode and standby-active, low mode testing.*

5.8.2. *Standby-Passive Mode.* The standby-passive mode test shall be performed according to section 5.3.1 of IEC 62301 Ed. 2.0 standby mode test (incorporated by reference, see § 430.3). Measure the instantaneous power and record the average value over the test duration of 10 minutes as $P_{standby\ passive}$.

5.8.3. *Standby-Active, Low Mode.*

5.8.3.1. *Network Connection and Capabilities.* Network connections should be listed in the user manual. If no connections are specified in the user manual, verify that the TV does not have network capabilities by checking for the absence of physical connections or the absence of network settings in the menu. If the TV has the capability to be connected to a network but was not shipped with a required piece of hardware (e.g. wireless adapter), that connection type shall not be tested.

5.8.3.2. *Peripherals and Network Connections.* If a physical network connection is present, network connectivity is listed in the TV menu, or network connection capabilities are listed in the user manual, the TV network capabilities shall be activated and the TV shall be connected to a Local Area Network (LAN) prior to being placed into standby mode. The LAN shall allow devices to ping other devices on the network but will not allow access to a wide area network (WAN). If the TV has multiple network connections (e.g., Wi-Fi, Ethernet, other), the TV shall be configured and connected to a single network source in accordance with the hierarchy of connections listed in Table 1.

5.8.3.3. *Measurement Procedure.* After the TV is placed into standby-active, low mode, allow the TV to stabilize in standby-active, low mode for a minimum of 30 minutes. Measure the instantaneous power and record the average value over at least a 10 minute duration as $P_{standby\ active,\ low}$.

TABLE 1—NETWORK CONNECTION HIERARCHY

Priority	Network connection type
1	Wi-Fi (Institution of Electrical and Electronics Engineers—IEEE 802.11–20072).
2	Ethernet (IEEE 802.3). If the TV supports Energy Efficient Ethernet (IEEE 802.3az–20103), then it shall be connected to a device that also supports IEEE 802.3az.
3	75 ohm Coaxial Cable (i.e. RG–6, RG–59/U).
4	RJ–11.
5	Other.

5.9. *Off Mode Test.*

5.9.1. The off mode test shall be performed according to section 5.3.1 of the IEC 62301 Ed. 2.0 off mode test (incorporated by reference, see § 430.3). Measure the instantaneous power and record the average value over the test duration as P_{off}.

6. *Annual Energy Consumption.*

6.1. The annual energy consumption (AEC) of the TV shall be calculated using on mode and standby mode power consumption values as calculated pursuant to section 5.4.

6.2. Compute the AEC of the TV using the equation below. The computed AEC value shall be rounded as follows:

6.2.1. If the computed AEC value is 100 kWh or less, the rated value shall be rounded to the nearest tenth of a kWh.

6.2.2. If the computed AEC value is greater than 100 kWh, the rated value shall be rounded to the nearest kWh.

6.3. Calculate AEC expressed in kilowatt-hours per year, according to the following:

$$AEC = 365 * (P_{on} * H_{on} + P_{standby\text{-}active,\ low} * H_{standby\ active,\ low} + P_{standby\ passive} * H_{standby\ passive} + P_{off} * H_{off})/1000$$

Where:

P_m = power measured in a given mode m (in Watts)

H_m = hours per day spent in mode m

365 = conversion factor from daily to yearly

1000 = conversion factor from watts to kilowatts

Proposed values for H_m (in hours/day) are specified in Table 2:

TABLE 2—HOURLY WEIGHTINGS

Network capable	H_{on}	$H_{standby\ active\ low}$	$H_{standby\ passive}$	H_{off}
Yes	5	19	0	0
No	5	0	19	0

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Part III

Consumer Product Safety Commission

16 CFR Parts 1112 and 1118
Requirements Pertaining to Third Party Conformity Assessment Bodies; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1118

[CPSC Docket No. CPSC–2012–0026]

Requirements Pertaining to Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, or we) is issuing a final rule establishing requirements pertaining to the third party conformity assessment bodies (laboratories) whose accreditations are accepted to test children's products in support of the certification required by the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA). The final rule establishes the general requirements concerning third party conformity assessment bodies, such as the requirements and procedures for CPSC acceptance of the accreditation of a third party conformity assessment body, and it addresses adverse actions that may be imposed against CPSC-accepted third party conformity assessment bodies. The final rule also amends the audit requirements for third party conformity assessment bodies and amends the Commission's regulation on inspections.

DATES: The rule is effective June 10, 2013 and applies to products manufactured on or after that date. The incorporation by reference of the publications listed in this rule is approved by the Director of the **Federal Register** as of June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Scott Heh, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; 301–504–7646; email: *sheh@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On May 24, 2012, the Commission published a notice of proposed rulemaking to establish requirements for third party conformity assessment bodies whose accreditations are accepted to test children's products in support of the certification that the CPSA requires. As explained in the following section, the CPSA requires that certain children's products must be tested by a third party conformity assessment body (also sometimes called a laboratory), and the manufacturer or private labeler of that product must issue a certificate, based on the third party testing, stating that the product meets all applicable CPSC requirements. This rule finalizes the proposal published on May 24, 2012.

B. Statutory Provisions

Section 14(a)(1) of the CPSA (15 U.S.C. 2063(a)(1)), as amended by the CPSIA (Pub. L. 110–314, 122 Stat. 3016), requires that the manufacturer (this term includes the importer) and the private labeler, if any, of a product that is subject to an applicable consumer product safety rule under the CPSA, or any similar rule, ban, standard, or regulation under any other Act enforced by the CPSC, issue a General Conformity Certificate. The General Conformity Certificate certifies "based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission," and it specifies each rule, ban, standard, or regulation applicable to the product. 15 U.S.C. 2063(a)(1)(A).

As noted above, section 14(a)(2) of the CPSA states that for any children's product that is subject to a children's product safety rule, every manufacturer (this term includes the importer) of such children's product (and the private labeler, if the children's product bears a private label) shall submit sufficient samples of the product, or samples that are identical in all material respects to the product, to an accredited third party conformity assessment body (or, laboratory) to be tested for compliance with such children's product safety rule. Section 14(a)(2)(B) of the CPSA requires the manufacturer or private labeler, based on such testing, to issue a certificate (Children's Product Certificate), certifying that such product complies with the children's product safety rule. Section 14(h) of the CPSA clarifies that, irrespective of certification, the product in question must actually comply with all applicable rules, regulations, standards, or bans enforced by the CPSC.

Section 14(a)(3) of the CPSA establishes various timelines for accreditation of the laboratories that may conduct third party tests of children's products, and it requires the Commission to publish "a notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity" with specific laws or regulations. Under section 14(a)(3)(A) of the CPSA, the requirement for a manufacturer or private labeler of a children's product subject to a children's product safety rule to issue a certificate based on third party testing does not commence until "more than 90 days" after the Commission publishes a notice of requirements pertaining to the regulation or standard to which the children's product is subject.

Section 14(a)(3)(C) of the CPSA provides that the Commission may either accredit laboratories itself, or it may designate an independent accreditation organization to conduct the accreditations. Section 14(a)(3)(E) of the CPSA requires that the Commission maintain on its Web site an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules.

Section 14(i)(1) of the CPSA requires the Commission to establish "requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies" under section 14(a)(3)(C) of the CPSA. Section 14(e) of the CPSA addresses Commission withdrawal and suspension of the accreditation (or its acceptance of the accreditation) of a laboratory.

Section 14(f)(2)(A) of the CPSA defines a "third party conformity assessment body" to mean a conformity assessment body that is not owned, managed, or controlled by the manufacturer or private labeler of a product assessed by the laboratory, unless such a laboratory has satisfied certain statutory criteria. Section 14(f)(2)(D) of the CPSA provides that a laboratory owned, managed, or controlled by a manufacturer or private labeler may be accredited by the Commission, if the Commission makes certain findings, by order, concerning the laboratory's protections against undue influence by the manufacturer, private labeler, or other interested parties. In that case, the laboratory is considered "firewalled." Similarly, section 14(f)(2)(B) of the CPSA lists five criteria that a conformity assessment body, owned or controlled in whole or in part by a government (or, governmental laboratory), must satisfy for its accreditation to be accepted by the CPSC.

The final rule establishes the requirements for CPSC acceptance of the accreditation of a laboratory to test children's products under section 14 of the CPSA. As discussed in detail in the preamble to the proposed rule, the requirements of the final rule are largely the same as the requirements used by the CPSC since passage of the CPSIA in August 2008. 77 FR at 31087–89. In addition, the rule delineates how a laboratory may discontinue voluntarily

its participation with the CPSC, and it establishes the procedures for the suspension and/or withdrawal of CPSC acceptance of the accreditation of a laboratory. The final rule also amends the recent final rule titled, "Audit Requirements for Third Party Conformity Assessment Bodies" (audit final rule), which implements section 14(i)(1) of the CPSA. Finally, the final rule makes particular conforming amendments to 16 CFR 1118.2(a).

II. Comments on the Proposed Rule and the Commission's Responses

In this section, we describe and respond to the comments received on the proposed rule. A summary of each of the commenter's topics is presented, and each topic is followed by our response. We received six comments on seven topics. Several commenters make general statements supporting the overall purpose of the proposed rule. All of the comments can be viewed at: www.regulations.gov, by searching under the docket number of the rulemaking, CPSC–2012–0026.

A. Sample Homogeneity and X-Ray Fluorescence Spectrometry

(*Comment 1*) With regard to the proposed test methods for determining lead content in component parts, a commenter notes the proposed requirement that three or more measurements must be made when using the x-ray fluorescence spectrometry (XRF or EDXRF) method described in ASTM F2853–10, also known as Energy Dispersive XRF Spectrometry Using Multiple Monochromatic Excitation Beams (currently allowed for lead in paint testing). As described in the proposed test method, the three measurements are intended to ensure some degree of spatial homogeneity or assurance that the material tested does not indicate falsely compliance with the lead content limit of 100 parts per million (ppm) because a "local" area, unrepresentative of the component part, was tested. The commenter recommends removal of the requirement to sample three or more areas using the lead content testing method described in ASTM F2853–10.

The commenter states that any empirical evidence of nonhomogeneities resulting in a false determination of compliance is "questionable at best." The commenter raises several objections to the "wet chemistry" method (Inductively Coupled Plasma, or ICP, using various spectrometric techniques), including a procedural step where 30 to 100 milligrams (mg) of a sample are collected and subjected to testing. The commenter points out that the ICP method does not require samples from three areas of the component part to be tested, and the commenter questions why the XRF method should be subject to that requirement. The commenter opines that this is a policy issue to be determined by the Commission and not a technical issue to be determined by CPSC staff. The commenter states that if a component part "appears not to have visual anomalies, it can reasonably be presumed to in fact be homogeneous with respect to its lead content." The commenter adds that very small component parts may pose practical difficulties in providing locations for three measurements and that the proposed testing method has no allowance for very small component part testing. The commenter concludes that the test method, ASTM F2853–10, requires only one measurement when used to determine the lead content of a paint sample.

Another commenter expresses concern that the small spot size (on the order of 1 mm^2) increases the sensitivity of the test method ASTM F2853–10 to nonhomogenieties in the lead content of the component part under test.

Another commenter expresses concern that the testing for homogeneity requires the use of XRF in the test methods for lead content determination (the requirement that at least three spatially separated measurements be made). The commenter points out that the ICP method requires only 30 to 100 mg of material, which the commenter considers "incongruous" with respect to homogeneity.

Another commenter remarks that the CPSC test method CPSC–CH–E1001–08.2 (total lead (Pb) in nonmetal children's products), states that a homogenized aliquot [1] should be prepared after grinding a sufficient sample of a component part for ICP testing. The commenter states that there is no clear guidance on how to determine what is "sufficient." The commenter also notes that if a sample is not homogeneous, ICP testing is required (instead of XRF). However, the commenter asserts that if the component part is nonhomogeneous, the ICP testing results can vary, depending on where the sample is taken. The commenter opines that ICP testing of nonhomogeneous component parts may not adequately reflect the component part's lead content, and XRF testing, using multiple locations, is better for determining the component part's lead content.

(*Response 1*) We decline to revise the test method for determining lead content that requires multiple sample areas to be tested when using forms of XRF. We believe that XRF has the potential, with certain limitations, to measure reliably lead content in some homogeneous metal and glass materials at the concentrations necessary to certify compliance with the 100 parts per million (ppm) limit now required under the CPSIA for children's products. With the appropriate test methods and reference materials, CPSC staff considers homogeneous substrates to be necessary in order for the XRF methods included in ASTM F2853–10, or in the proposed CPSC test methods, to be effective in determining the compliance of the sample being tested. Multiple measurements are required to determine that such homogeneity exists, which allows the use of the XRF measurements for children's product certification purposes. We agree that it is important to obtain a sufficient sample for wet chemistry testing. The CPSC wet chemistry test methods for determining lead in a substrate include instructions for the user to make every effort to homogenize the sample prior to taking 30 to 100 mg for testing. Thus, a sufficient sample would be an amount that ensures that the portion selected for testing actually represents the total lead content of the component part under evaluation.

With respect to small parts and the need to determine homogeneity, there are no limitations on using XRF for testing small component parts. Small parts may be rotated so that different surface areas would be tested. If three completely distinct areas could not be tested, three separate tests could still be done on overlapping areas.

(*Comment 2*) A commenter asserts that all XRF techniques are being subjected to additional homogeneity requirements that are really intended only for the ASTM F2853–10 method. The commenter asserts that the relatively large spot size of other XRF methods mitigates the need for the repeated measurements in the proposed test method. The commenter recommends that in order to mitigate some of the heterogeneity effect:

> * * * an 8 mm diameter x-ray surface shot (HHXRF),[2] with a scatter that widens in three dimensions, should be as much of a heterogeneity correction as the 100 mg sample size for wet chemistry to be considered quantitative under EN 71–3 and others.

The commenter adds that even though other types of XRF spectrometers that

[1] An aliquot in chemistry is a portion of a sample.

[2] HHXRF is an acronym for "handheld x-ray fluorescence spectrometry," and it is used to distinguish this type of handheld device from other forms of XRF spectrometry.

do not meet the requirements of ASTM F2853–10 are far less vulnerable to nonhomogenieties in a test sample, a homogeneity test for XRF methods should be retained, rather than eliminated, "because the need to limit all EDXRF techniques to materials that are proven to be homogeneous is beyond question."

(*Response 2*) We decline to remove the requirement to test multiple areas of the component part for lead from the test method. We believe that for dense materials, like metals and glass, typical XRF instruments sample a very small mass of the sample because the penetration of the x-rays is limited. Thus, it is appropriate when testing dense materials, to measure multiple areas to ensure homogeneity when using these test methods as the basis for issuing a Children's Product Certificate.

(*Comment 3*) A commenter notes that in § 1112.15(b)(29) of the proposed rule, in order for a laboratory to have its accreditation accepted by the Commission to test for lead content in children's metal products, a third party conformity assessment body must have the CPSC test method CPSC–CH–E1001–08, CPSC–CH–E1001–08.1, or CPSC–CH–E1001–08.2 in its statement of scope. The commenter further notes that in § 1112.15(b)(28) of the proposed rule, in order for a laboratory to have its accreditation accepted by the Commission to test for lead content in children's metal jewelry, a third party conformity assessment body must have the CPSC test method CPSC–CH–E1001–08 or CPSC–CH–E1001–08.1 in its statement of scope. The commenter requests that the "-08.2" version of the test method be allowed to be used by a laboratory for the testing of lead in children's metal jewelry, adding that this method allows the use of XRF testing.

(*Response 3*) We agree with the commenter that CPSC test method CPSC–CH–E1001–08.2 should be allowed under § 1112.15(b)(28) of the final rule. In the proposed rule, test method CPSC–CH–E1001–08.2 inadvertently was not included in proposed § 1112.15(b)(28), although it was intended that the test method be allowed. Therefore, in the final rule, § 1112.15(b)(28) expressly allows use of test method CPSC–CH–E1001–08.2.

(*Comment 4*) A commenter requests that a procedure for plated metals and glazed ceramics be developed for XRF using the ASTM F2853–10 method. This procedure would involve grinding a plated metal or glazed ceramic sample, as is done in preparation for an ICP test, and then testing the blended sample using the ASTM F2853–10 method. Another commenter requests that the CPSC make explicit that XRF can be used to test electroplated metals for lead content. The commenter notes that electroplating does not fall into the definition of a "paint or other similar surface-coating material" described in 16 CFR 1303.2(b)(1).

(*Response 4*) We disagree with the commenter's request to develop a procedure using the ASTM F2853–10 method for plated metals and ceramics because the method has not been validated for use on ground metals, which behave differently than solids when tested XRF, due to different scattering behavior and the presence of interstitial air gaps. Electroplated metals and glazed ceramics pose an especially difficult analysis challenge for XRF. Because such coatings become part of the substrate and are not subject to the lead paint ban, it is necessary to consider the single, nonhomogeneous material that results from the electroplating bonding with the substrate. The idea for a method suggested by the commenter could potentially be developed by some party in the future. We are particularly concerned that the small volume and mass of a sample probed by XRF would not adequately serve to indicate the homogeneity of the sample.

We decline the request to allow XRF to be used to test electroplated materials because currently it is not possible to determine the correct lead content in such materials by this method. The commenter is correct that electroplated coatings that become part of the substrate are not considered paint under 16 CFR part 1303. The combined electroplated metal (*i.e.*, the electroplating and the substrate together) must meet the 100 ppm lead limit. The x-rays used in XRF penetrate only a very small distance through metals, and as such, tend to sample the outer surface to a much higher degree than the base metal (substrate). The limited depth of x-ray penetration means that electroplating can screen the base metal from being properly measured by XRF. Additionally, because the x-rays do penetrate somewhat into the base metal, such a measurement also is not suitable for determining the lead in the electroplated coating itself, although it is only the combination of the two that is required to meet the 100 ppm lead content limit.

(*Comment 5*) A commenter questions the difference between the XRF method described in ASTM F2853–10 and other methods of XRF in their ability to detect lead in paint. Currently, only ICP techniques, or the XRF method described in ASTM F2853–10, are allowed to be used to determine the lead content in paint for children's product certification purposes. The commenter asserts that improvements in detector technology have improved the performance of handheld XRF instruments. The commenter adds that work is under way to convert the traditional lead in paint measurement of "Mass Loading," or micrograms per cm^2, into a concentration measurement of ppm.

(*Response 5*) At present, no XRF method, other than ASTM F2853–10, is recognized by the CPSC to determine accurately the lead content of painted surfaces of consumer products. The lead paint ban in 16 CFR part 1303 is based on the definition of "lead paint" as paint containing in excess of 0.009 percent lead by weight. Measurements in micrograms per cm^2 cannot be used to make such a determination without knowing the density and thickness of the paint, neither of which is generally known at the time of testing.

(*Comment 6*) A commenter states that other forms of XRF are at least as accurate as the ASTM F2853–10 method, and they disagree with the use of the phrase "may be," rather than the same language used for the ASTM F2853–10 method of describing suitable instruments for the accurate determination of lead in glass materials and homogeneous metals.

(*Response 6*) The commenter is referring to Tab C in the Staff Briefing Package, *Requirements Pertaining to Third Party Conformity Assessment Bodies*, for the proposed rule. Tab C, titled, *Study on the Applicability of X-ray Fluorescence Spectrometry for Measuring Lead in Metal and Glass Substrate*, describes how XRF potentially could be used to test homogeneous metal and glass materials found in children's products. The report examines extending the use of XRF beyond the already-approved method for polymeric materials to include glass and metal substrates.

At the time the report was prepared, the CPSC test methods for determining the lead content of metal and nonmetallic component parts did not include procedural steps or limitations on the use of XRF for homogeneous glass materials, crystals, and some metals. The report recommended updating the CPSC test methods to allow laboratories to use HHXRF or other types of laboratory XRF analyzers for testing glass and metal items, with limitations.

Since then, the CPSC test methods have been updated. The phrase "may be" is not used in the context of XRF in

either the proposed rule or the proposed CPSC test methods, other than stating: "Destructive sample preparation techniques may be required for certain components to create a uniform sample for testing."

(*Comment 7*) A commenter states that the limitations applied to other forms of XRF listed in the test methods, CPSC–CH–E1001–08.2 and CPSC–CH–E1002–08.2, should apply to the form of XRF described in ASTM F2853–10. According to the commenter, the CPSC test methods apply only four limitations to the form of XRF described in ASTM F2853–10. The commenter recommends the following additional limitations be applied to the form of XRF described in ASTM F2853–10:

- Verify the instrument performance daily, by analyzing one or more reference materials of the same matrix or metal type as the materials on which the analyses will be performed.
- For testing metals, if the form of XRF described in ASTM F2853–10, deviates from the method described in the ASTM test method, all of the limitations in test method CPSC–CH–E1001–08.2 applied to other forms of XRF should be applied to the form of XRF described in ASTM F2853–10.
- Because uncoated wood and fabrics were not evaluated in the interlaboratory study of the form of XRF described in ASTM F2853–10, all of the limitations in test method CPSC–CH–E1002–08.2 applied to other forms of XRF should be applied to the form of XRF described in ASTM F2853–10.

(*Response 7*) With regard to the first bullet point in the commenter's recommendations, we agree that it is important for reasonable quality assurance/quality control (QA/QC) requirements to be a part of all types of XRF testing. However, we found that section 13.3 of ASTM F2853–10 provides guidance on quality control samples that should be followed to verify system control. The absence of an applicable existing standard for other XRF methods, and the wide variety of XRF instrumentation used in the more general case, led us to make the specific QA/QC directions discussed. We included in the lead test methods quality control guidelines described in section 6 of International Electrotechnical Commission (IEC) Method 62321 ED 1.0 B; but because that method is designed for higher lead concentrations, we added the requirement to verify XRF spectrometer performance daily by analyzing a reference material with 50 to 300 ppm lead content.

The second and third bullet points in the commenter's recommendations suggest that additional limitations should be placed on ASTM F2853–10 testing for metals other than zinc. We believe that the staff study presented in Tab C of the Staff Briefing Package for the NPR was sufficient and that CPSC–CH–E1001–08.2 adequately deals with other metals for XRF testing using the method described in ASTM F2853–10. The third bullet point suggests that for natural wood and for fabric, ASTM F2853–10 testing should have the same requirements as traditional XRF testing, and CPSC staff believes that is the case as the method is written.

(*Comment 8*) A commenter requests clarification on several technical issues related to XRF testing.

First, the commenter asks if the term "matrix" means "metal" or the specific alloy used as a reference material in the test method CPSC–CH–E1001–08.2.

Second, the commenter asks for guidance on how many glass or other substrate standards should be used daily to verify instrument performance in the test method CPSC–CH–E1002–08.2. Finally, the commenter questions the value of a relative standard deviation (RSD) of 30 percent for very low instrument readings using the XRF method described in ASTM F2853–10. In the commenter's opinion, this proposed requirement does not take instrument repeatability into account and makes more expensive ICP testing necessary, even though the readings are not close to the compliance limits. The commenter recommends that when the testing results are well below the concentration limit that would render a reading inconclusive, the XRF results should not be excluded from indicating compliance with the lead content limit.

(*Response 8*) With regard to the commenter's first and second questions, it is not possible to know the exact alloy that is to be tested or to have sample standards that exactly match its chemical composition. Thus, "matrix" is used as a generic term to include metals and alloys similar to the sample to be tested. Laboratories should develop QA/QC procedures, including having various relevant metals, glass, and plastic standards to verify instrument performance. Exactly how extensive such a collection must be should be left up to the individual laboratories, their accreditation bodies, and their customers.

We agree with the commenter's final comment. Notably, this comment illustrates that at very low lead concentrations, differences of just a few ppm in measurements can result in an RSD indicating nonhomogeneity where possibly the instrumental variability is dominating the calculation. We believe that it is appropriate to allow XRF use where at least three measurements were taken by XRF as described in this method, and the result of each of those measurements is below 50 percent of the limit (*i.e.*, below 50 ppm), subject to the remaining limitations given for all types of XRF. Staff has posted two new test methods, CPSC–CH–E1001–08.3 (*http://www.cpsc.gov/PageFiles/137829/CPSC-CH-E1001-08_3.pdf*) and CPSC–CH–E1002–08.3 (*http://www.cpsc.gov/PageFiles/137832/CPSC-CH-E1002-08_3.pdf*) on the CPSC Web site, which includes this change, and the final rule allows this as an option for laboratory accreditation.

(*Comment 9*) One commenter refers to the requirement in Public Law 112–28 for the CPSC to provide alternative testing requirements for small batch manufacturers for testing compliance with some product safety rules and to exempt small batch manufacturers from the third party testing requirements if no alternative testing requirement is available or economically practicable. The commenter proposes that the Commission allow handheld XRF, which the commenter notes, the Commission recognizes is less expensive than other approved test methods. The commenter suggests that the Commission allow it to be used for third party testing of other substrates, in addition to the homogenous polymer substrates for which it has already been approved. The commenter is willing "to work with the Commission "on the execution of a plan that will prevent the needless exemption of an entire subset of the market that we all agree is in need of this regulatory oversight."

(*Response 9*) The CPSC has proposed the use of XRF to determine the lead content of glass materials, crystals, and some metals. At this time, we are not recommending that handheld XRF be approved for the third party testing of other substrates. CPSC staff has not determined that handheld XRF possesses enough accuracy, precision, and repeatability required for the determination of the lead content of substrates other than in homogenous polymer products and the proposed materials.

Public Law 112–28 requires the Commission to provide alternative testing requirements for small batch manufacturers for certain children's product safety rules. If no alternative method is available, the Commission, with some exceptions, is to exempt small batch manufacturers from the third party testing requirements. However, developing alternative testing requirements for small batch manufacturers is not within the scope of

the current rulemaking proceeding, which concerns the accreditation requirements for third party conformity assessment bodies.

(*Comment 10*) A commenter asks that the CPSC propose a technical, rather than a proprietary solution, for lead content testing. The commenter asserts that the CPSC must allow new and emerging technologies the same access to the proposed test methods.

(*Response 10*) The CPSC does not endorse one product or technique over another, equally effective product or technique. For lead content testing, multiple methods and technologies are available for use by a laboratory. Each acceptable method has been proven to meet the technical requirements (e.g., precision, accuracy, repeatability) needed to determine compliance to the lead content limit of 100 ppm. The CPSC supports the development of new technologies for achieving the goals of improved product safety and reduced costs to manufacturers. We decline to change the final rule based on this comment.

B. Laboratory Accreditation

(*Comment 11*) A commenter emphasizes the importance of the CPSC's evaluation of the integrity of each laboratory's independence and its compliance with the requirements of International Standards Organization/International Electrotechnical Commission (ISO/IEC) 17025(E). The commenter states:

> By making the accreditation and audit requirements more focused on the authentication of independence, the CPSC will be able to adopt requirements that will further its commitment to ensure that all approved laboratories are meeting the conditions for their continuing accreditation.

(*Response 11*) It is unnecessary to change the final rule based on this comment because the rule already addresses the commenter's concerns. We agree that a laboratory's independence should be reassessed on a regular basis. The final rule on the audit of third party conformity assessment bodies (16 CFR part 1112, subpart C) requires that the reassessment portion of an audit, which is conducted by the accreditation body, include an examination of the laboratory's management system to ensure that the laboratory is free from any undue influence.

For the Commission to accept a laboratory as firewalled, the laboratory must have policies and procedures in place, consistent with laboratory independence and impartiality. To evaluate whether a laboratory satisfies these criteria on independence and impartiality, the final rule requires that a laboratory seeking CPSC-accepted firewalled status submit copies of various documents to the CPSC. The applicant laboratory would need to submit its policies and procedures that explain how test results are protected from undue influence by the manufacturer, private labeler, or other interested party. The CPSC's purpose in reviewing such documents would be to assess whether the laboratory has established the necessary written procedures to maintain its independence from the manufacturer or private labeler. We also require the laboratory to submit copies of established policies and procedures, indicating that the CPSC will be notified immediately of any attempt to hide or exert undue influence over test results and policies and procedures and explaining that an allegation of undue influence may be reported confidentially to the CPSC. Our purpose in reviewing these documents is to ensure that the laboratory has written procedures in place that address when and how the CPSC will be notified of any attempt to exert undue influence.

(*Comment 12*) A commenter recommends that reciprocity provisions be built into the accreditation and audit provisions for laboratories. The commenter asserts that in the absence of aligned standards and compliance protocols, accreditation for foreign laboratories from countries with reciprocity provisions is the optimum approach to third party testing and provides a "level playing field" for manufacturers and laboratories without compromising the accreditation program's integrity. The commenter adds that for trade purposes, U.S.-based laboratories should be allowed to provide their services in any market that contains foreign-based laboratories seeking CPSC acceptance of their accreditation.

The commenter adds that the Occupational Safety and Health Administration (OSHA) Nationally Recognized Laboratories (NTRL) program and the Federal Communications Commission (FCC) accreditation program for Telecommunications Certification Bodies include reciprocity provisions. The commenter states that such reciprocity provisions benefit U.S. manufacturers, by streamlining compliance requirements across markets and allowing laboratories to bundle services.

(*Response 12*) We decline to adopt reciprocity as a criterion in the CPSC third party conformity assessment body. In implementing the CPSIA's requirement that products subject to CPSC children's product safety rules be third party tested, the CPSC's interest is to establish an effective and efficient program through which we recognize laboratories worldwide that are competent to conduct these third party tests. The use of International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA) signatory accreditation bodies creates a level playing field, by providing an internationally available, consistent, accreditation process for laboratories, regardless of where they are located. Any CPSC-accepted laboratory, whose scope includes the tests conducted, may test children's products for compliance to the applicable CPSC children's product safety rules. Reciprocity provisions regarding U.S.-based laboratory activities in other nations are not necessary to ensure the technical competence and objective assessment of compliance from a CPSC-accepted laboratory.

(*Comment 13*) Two commenters note that the proposed rule defines a "firewalled" laboratory, in part, as one that "is under a contract to a manufacturer or private labeler * * * that explicitly limits the services [it] may provide for other customers and/or limits which or how many other entities may also be customers of the [laboratory]." (Proposed § 1112.11(b)(1)(ii)(D)). The commenters assert that the definition constitutes an unnecessary and unwarranted intrusion into the private contractual rights of independent laboratories and their customers.

One commenter notes that absent any indication that such a contractual relationship, in fact, constitutes "ownership or control" by a manufacturer over a laboratory, the proposed rule/staff justification offers no foundation for this provision, and in fact, appears to have no valid purpose (including any based on congressional intent in this regard) for such an overly broad definition of "firewalled lab." Another commenter recommends that this provision be modified to reflect that, absent any indication that such a contractual relationship, in fact, constitutes "ownership or control" by a manufacturer over a laboratory, the laboratory should not be considered to be a "firewalled lab."

(*Response 13*) The preamble to the proposed rule included a discussion noting that a contractual relationship between a manufacturer and a laboratory that explicitly limits which or how many other entities may also be customers of the laboratory would grant

the manufacturer such a significant interest in the work of the laboratory that the Commission would consider the interest "controlling." Section 1112.11(b)(1)(ii)(D) of the proposed rule would designate a laboratory with such a contractual relationship with a manufacturer as "firewalled."

After reviewing the comments regarding this section of the proposed rule, we agree with the commenters that this type of contractual relationship would not necessarily result in a situation where the manufacturer controls the laboratory. Because the specific details of these types of contracts are highly variable, it would be impractical and complex to assess independently each contract on a case-by-case basis. Further, we consider that such an assessment would result in little benefit to consumer safety, above the other elements in the rule that define a firewalled laboratory, and above the criteria CPSC acceptance of a laboratory's accreditation. Therefore, we are removing the provision regarding contractual relationships as one of the criteria that define a "firewalled" laboratory in § 1112.11(b)(1)(ii)(D) of the final rule.

(*Comment 14*) One commenter recommends that the provision stating that a "one percent or greater ownership or control" for a governmental laboratory (proposed § 1112.11(c)(1)), should instead be a higher percentage and/or a fact-based determination based on the "undue influence" definition whereby the governmental ownership or control causes the laboratory to "compromise the integrity of its testing processes or results."

(*Response 14*) We decline to select another percentage for governmental ownership or control based on this comment. Section 14(f)(2)(B) of the CPSA states that a governmental third party conformity assessment body is an entity that is owned or controlled in whole or in part by a government. "In part" can be interpreted to be any proportion of ownership or control, and therefore, it is not limited to a minimum value. As stated in the proposed rule: "Selecting one percent as an ownership threshold is a practical matter of selecting the smallest whole number as an expression of ownership." The commenter does not provide a recommended value greater than one percent to indicate governmental ownership or control. Nor does the commenter provide a rationale for using an ownership percentage other than one percent.

We decline to adopt the commenter's recommendation with regard to considering a fact-based determination. The definition of a "governmental third party conformity assessment body" in section 14(f)(2)(B)(ii) of the CPSA states that the laboratory's test results are not "subject to undue influence." We interpret "subject to undue influence" to mean being liable or vulnerable to undue influence, not to an after-the-fact determination that undue influence had actually been exerted to compromise the integrity of testing results. Thus, we consider being vulnerable to the exercise of undue influence, not whether the undue influence has occurred, as being "subject to undue influence."

(*Comment 15*) One commenter recommends eliminating the provision that a laboratory will be classified as "governmental" if any of that laboratory's "management or technical personnel include any government employees." (Proposed § 1112.11(c)(4)). The commenter asks whether the phrase "technical personnel" should be deleted or clarified to indicate that such individuals cannot be employees of both the government and the laboratory, or whether another modification should be provided because some government employees might be assigned temporarily to a laboratory for specific training/oversight/similar legitimate function.

(*Response 15*) We decline the commenter's recommendation. We assume that a government management or technical employee is present in the laboratory to perform a function essential to the laboratory's testing operations. If the management or technical position is controlled by the government, then the government has control over some aspect of the laboratory's testing and test results. Therefore, additional safeguards against the exercise of undue influence are warranted.

(*Comment 16*) One commenter recommends that the Commission modify proposed § 1112.43 to clarify that only "material" omissions or "materially incorrect" information in an application for acceptance can be grounds for denial of the application and that the laboratory is to be afforded a reasonable opportunity to correct an omission or error in its application.

(*Response 16*) We decline the commenter's recommendation to change the proposed rule because all of the information described as grounds for denial of an application in § 1112.43 of the rule is considered material. If any of the information described in § 1112.43(a) is not provided, that would be considered to be a material omission. Any inaccurate information would be considered materially incorrect. Clarification in this section is not necessary because the plain language of § 1112.43(a) of the rule includes the omissions of information considered to be material.

We do not agree with the commenter that changes are needed to the proposed rule to provide an applicant a reasonable opportunity to correct an omission or error in its application because the language in the proposed rule already provides such opportunity. Section 1112.17(a) of the final rule (unchanged from the proposal) allows CPSC staff to contact a laboratory with any questions regarding an application or to request the submission of missing information. Section 1112.43(b) in the final rule provides that "the CPSC's denial of an application will follow the process described in § 1112.51 of this subpart." Section 1112.51 of the final rule stipulates that the CPSC will provide an initial notice that advises the laboratory of the specific grounds for a denial of an application. Some common reasons for denial of an application include: a missing scope document or a missing or incorrect test method reference within a scope document.

In § 1143(a)(1) of the final rule, a laboratory has 30 calendar days to respond and correct the issue. Further, the procedures in the final rule allow for a laboratory to request an extension of time with an explanation and an estimate for how much additional time is needed. Even in cases in which an applicant cannot correct the issue within an allotted extension and an application is denied, the applicant may reapply for CPSC acceptance when all required elements are fulfilled.

(*Comment 17*) One commenter recommends that the Commission specify that only a "material" failure "to comply with an applicable [test method] protocol, standard or requirement * * *" (proposed § 1112.47(b)) or a "material" failure "to comply with any provision of Subpart B" (1112.47(c)) may provide grounds for CPSC withdrawal of a laboratory's accreditation, not just any minor/technical failure, which the commenter asserts the proposed rule now seems to allow.

(*Response 17*) We decline the commenter's recommendation to add the additional language in section 1112.47(b) or (c) of the final rule because the plain language of those sections, as proposed, already addresses the commenter's concerns. Any failure "to comply with an applicable protocol, standard, or requirement * * *" is grounds for withdrawal of CPSC acceptance listed in § 1112.47(b) of the proposed rule (unchanged in the final

rule), because the applicable protocol, standard, or requirement is considered to be "material" or it would not have been included in the rule. Similarly, any failure "to comply with any provision of Subpart B" in § 1112.47(c) of the final rule may be grounds for withdrawal of CPSC acceptance because those requirements would not be included in the rule unless they were considered "material."

(*Comment 18*) A commenter recommends that § 1112.53 of the proposed rule should specify in more detail the circumstances under which the CPSC may immediately suspend its acceptance of a laboratory's accreditation.

(*Response 18*) We disagree that the changes suggested by the commenter are needed in this section of the proposed rule because the proposed rule at § 1112.53 already clearly describes, in detail, the circumstances under which the CPSC may withdraw immediately and temporarily its acceptance of a laboratory's accreditation. The CPSC may take such action when it is in the public interest to protect health and safety. The section defines "in the public interest to protect health and safety" to mean that the CPSC has credible evidence that:

(1) The integrity of test(s) being conducted under a scope for which we have accepted the laboratory's accreditation has been affected by undue influence or otherwise interfered with or compromised; and

(2) any portion of a CPSC scope for which we have accepted the laboratory's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

We believe this language, which is unchanged from the proposal, clearly defines the threshold for CPSC to consider immediate withdrawal of its acceptance of accreditation.

(*Comment 19*) A commenter requests that the status of CPSC-accepted laboratories be disclosed publicly and that it should be readily ascertainable on the CPSC's Web site.

The list of CPSC-accepted laboratories on the CPSC Web site at: *http://www.cpsc.gov/en/Business-Manufacturing/Lab-Accreditation/*, currently does not display whether a laboratory is categorized as independent, firewalled, or governmental. The commenter asserts that it is in the interest of commercial customers and consumers to display this information and that the proposed rule should be modified to require that in applying for acceptance by the CPSC, "a lab must accede to the public disclosure of its acceptance status" (independent, firewalled, governmental) on the Web site display of CPSC-accepted laboratories.

(*Response 19*) For the reasons stated by the commenter we agree to list the independent, firewalled, or governmental status of accepted laboratories on the CPSC Web site at section 1112.19. While it is true that once its accreditation is accepted by the CPSC, a laboratory may conduct tests within its scope for children's product certification purposes, regardless of its status as an independent, governmental, or firewalled laboratory there is no restriction on the CPSC providing the public and manufacturers with this information.

It is important to note, however, that many of the CPSC-accepted governmental laboratories have a small portion of government ownership and little-to-no government involvement in their operations. These laboratories operate essentially as independent laboratories, but by law, they must be categorized as "governmental" because they have partial government ownership, such as through a joint venture. Other governmental laboratories are associated with state-funded institutions. Because forms of governmental involvement can vary, listing a laboratory as "governmental" does not necessarily convey any meaningful information to the public. Yet, in the interest of transparency the Commission has chosen to provide the information in a similar manner to the way in which the CPSC lists firewalled laboratories.

As noted, the CPSC already lists firewalled laboratories on its Web site, despite the fact that the firewalled status applies only to a manufacturer or private labeler who owns, manages, or controls the laboratory. This practice will not change. (See *http://www.cpsc.gov/en/Business—Manufacturing/Lab-Accreditation/*.) In other words, the laboratory is considered independent for any other manufacturer or private labeler who may wish to use the laboratory's services.

C. Inspections and Investigations

(*Comment 20*) One commenter recommends modifying proposed § 1112.27 to clarify that laboratories must allow on-site inspections by CPSC personnel or their designated representative, without exception. The commenter notes that this should be enforced uniformly, to allow participation in the program.

(*Response 20*) We do not believe that the requested modification is necessary. The language in proposed § 1112.27 states: "A third party conformity assessment body, *as a condition of its accreditation, must allow* an officer or employee duly designated by CPSC to enter and inspect the third party conformity assessment body for purposes of an investigation under this part." (emphasis added). The language in proposed § 1112.27 (unchanged in the final rule) is clear regarding the compulsory nature of allowing on-site inspections when asked by CPSC personnel for the purpose of an investigation as a condition of accepting the laboratory's accreditation.

(*Comment 21*) Two commenters request that "failure to cooperate" should be defined to address specifically only the actions or inactions that are within the scope of an investigation, and they should not be defined in regard to any other request from CPSC staff. The commenters opine that "a request to receive a subpoena for requested documents or the assertion of any other legal rights or procedures available to the lab in question should explicitly not be considered 'failure to cooperate.'"

(*Response 21*) Because both the CPSA and the final rule specifically state that accreditation may be suspended for failing to cooperate with an investigation, we believe that the current text of the final rule already meets the commenters' request to limit the suspension to the scope of the investigation.

Section 14(e)(3) of the CPSA states:

> The Commission may suspend the accreditation of a conformity assessment body if it fails to cooperate with the Commission in an investigation under this section.

Section § 1112.45 of the final rule: *What Are the Grounds for Suspension of CPSC Acceptance?* implements section 14(e)(3) of the CPSA by stating:

> (a) The CPSC may suspend its acceptance of a third party conformity assessment body's accreditation for any portion of its scope when the third party conformity assessment body fails to cooperate with an investigation under section 14 of the CPSA.

Finally, a laboratory that exercises any legal procedural right available under law would not be considered to have "failed to cooperate" under the final rule. Such a legal procedural right would include a laboratory request for the issuance of a subpoena before providing documents to the CPSC.

(*Comment 22*) One commenter states that the suspension of acceptance of accreditation of a laboratory should be

warranted only when a laboratory exhibits a pattern of evading legitimate CPSC requests or inquiries related to an inspection or investigation. This commenter states that a "failure to cooperate" should specifically exclude: "reasonable delays in providing requested information or documents, considering all the circumstances." The commenter asks that the phrase "failure to respond to CPSC inquiries or requests" (section 1112.45(a) of the proposed rule) be defined more specifically to specify, for example, a 20-day period or other reasonable time, based on the circumstances.

(*Response 22*) We decline to adopt the commenter's recommendations. We agree with the commenter that evasive responses to CPSC inquiries could be grounds for suspension of the CPSC's acceptance of the laboratory's accreditation. Section 1112.45 of the final rule states:

> A third party conformity assessment body "fails to cooperate" when it does not respond to CPSC inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when it fails to cooperate with an investigatory inspection under § 1112.27.

Because the text of the proposed and final rule already includes responding evasively to investigations, we believe that the current text already meets the commenter's concerns. It is not necessary for a pattern of evasion to be established before suspension of acceptance of accreditation is considered. Requiring a pattern of evasion would allow laboratories to respond to inquiries in a manner that is evasive some of the time, until a pattern is established. Because inspections or investigations frequently pertain to the presence of noncompliant children's products in the marketplace, evasive responses are never acceptable.

With regard to the commenter's statement regarding "reasonable delays," what is considered "reasonable" varies, based on the nature of the request. Therefore, specifying a period is impractical. For example, a request for a corrected phone number, compared to a request for testing records covering a multiyear period, will have different "reasonable" expected response periods. Thus, 20 days may be excessive for a telephone number correction, while that period may be unreasonably short for the collection and transmission of voluminous records. Further, the phrase "other reasonable time based on the circumstances" does not add specificity to what is considered "reasonable."

(*Comment 23*) Two commenters state that a request by the CPSC for a laboratory's "protocols and procedures" should relate only to the specific grounds for the investigation, not to testing in general.

(*Response 23*) We decline the commenters' request because the rule, as proposed, already addresses the commenters' concerns. Section 1112.25(a)(4) of the proposed rule: *What are a third party conformity assessment body's recordkeeping responsibilities?* requires laboratories to maintain internal documents describing testing "protocols and procedures" that have applied to a test conducted for purposes of section 14 of the CPSA. Section 1112.51 of the rule, as proposed (unchanged in the final rule), limits investigations to applications for acceptance of accreditation, submissions alleging grounds for an adverse action, or other information received by the CPSC that relates to a third party conformity assessment body's ability to become or remain CPSC-accepted.

(*Comment 24*) Two commenters recommend that the term "Investigation" be defined to mean more than a nonspecific request for information, with one commenter proposing a definition of "Investigation" as a "formal inquiry based on specific and sufficient facts that give rise to a reasonable belief by the CPSC that a material violation of this rule has occurred." This commenter then suggests that "Investigations" should be limited to the scope and the specific, material violation implicated by those facts. The commenter adds that "Investigations" "should only be allowed when something akin to "probable cause" arises about a specific violation of a lab and should not be allowed to be fishing expeditions by the agency."

(*Response 24*) We decline to add a formal pleading requirement or the equivalent of a "probable cause" requirement because determining whether an investigation is warranted is a fact-based judgment best made on a case-by-case basis.

Section 1112.49(a) of the final rule (unchanged from the proposal) allows any person to submit information alleging grounds for adverse action, as set forth in part 1112. The submitter is required to allege that one or more of the grounds for adverse action set forth in part 1112 exist. Section 1112.49(a) of the final rule describes the kind of information necessary for CPSC to substantiate an allegation for an adverse action. Any investigation resulting from the information submitted under § 1112.49 would be investigated under the procedures described in § 1112.51. If a person submitting information does not provide sufficient information to investigate an allegation, it will be difficult for the agency to substantiate the allegation, as is indicated in § 1112.49(b), which states:

> Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address the categories of information outlined in paragraph (a) of this section above.

The language of § 1112.49(a) sets the threshold regarding the types and sufficiency of the information necessary to warrant an investigation. Therefore, it is unnecessary to define the term "Investigation," as the commenters have requested.

D. Undue Influence

(*Comment 25*) One commenter recommends that the Commission specify that the exercise of "undue influence" over the laboratory sufficient to justify CPSC "withdrawal" of its acceptance of the laboratory (proposed § 1112.47(a)) must be "directly related and material to the scope of the testing for which the laboratory was accepted by the CPSC." The commenter notes that this is particularly important regarding the requirements for "firewalled" laboratories.

(*Response 25*) We decline to adopt the commenter's recommendation. The current language of §§ 1112.47(a) and 1112.51 of the final rule (unchanged from the proposal) permits the CPSC flexibility in assessing the nature of various undue influences acting upon conformity assessment bodies, whereas the commenter's recommendation would narrow this flexibility. This could have unintentional and unforeseeable consequences affecting the CPSC's ability to address instances of undue influence for testing under the jurisdiction of the CPSC.

The commenter does not explain why the withdrawal of CPSC acceptance of a firewalled laboratory should be treated differently than other types of laboratories. The CPSC regards any exercise of undue influence on the integrity of a laboratory's test results as calling into question the integrity of all of the laboratory's test results, including those related to the testing of children's products.

If a laboratory disagrees with a CPSC final notice of adverse action, § 1112.51 of the final rule describes procedures for filing an administrative appeal. In addition, for firewalled laboratories, any suspension or withdrawal of CPSC acceptance of accreditation must be

done by order of the Commission. These procedures allow a laboratory to present its case, if there is disagreement with the CPSC staff findings that support an adverse action.

E. Adverse Actions

(*Comment 26*) One commenter recommends that the Commission clarify in the rule that, except for situations that warrant an "immediate suspension" of a laboratory, a laboratory may be suspended or withdrawn from acceptance only after a formal "investigation" and an adequate opportunity for the laboratory to respond under the rule.

The commenter further recommends that the Commission should allow "immediate withdrawal" of a laboratory's acceptance of accreditation (proposed § 1112.53) only upon an affirmative vote of the Commission (not a mere staff determination that withdrawal is necessary "to protect the public health and safety"). The commenter notes that Commission action is necessary for the analogous action by the CPSC to waive the 6(b) notification rights of a company to disclose immediately product-specific information to the public, and likewise, should be required here.

(*Response 26*) We decline the commenter's recommendation for allowing for an "immediate suspension" because the final rule, which is unchanged from the proposed rule, already includes a section describing the procedures to be used during an investigation, and further clarification is not necessary.

Subpart D of the final rule (unchanged from the proposal), *Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication*, includes § 1112.51, *What are the procedures relevant to adverse actions?* describes the procedures that will be used to conduct an investigation, and it also includes established procedures and opportunities for the laboratory to respond.

We decline to adopt the commenter's recommendation that an affirmative vote of the Commission be required for "immediate withdrawal" of a laboratory's acceptance of accreditation. Section 14(a)(3)(C) of the CPSA states that accreditation of third party conformity assessment bodies may be conducted by the Commission or an independent accreditation organization designated by the Commission. Currently, CPSC staff has been tasked with reviewing and accepting the accreditation of independent and governmental laboratories. While CPSC staff also reviews accreditation and application materials from firewalled applicants, section 14(f)(2)(D) of the CPSA provides that the Commission may accept a firewalled laboratory's accreditation by order of the Commission after determining that the firewalled applicant meets statutory requirements.

Section 14(e) of the CPSA authorizes the Commission to withdraw or suspend its accreditation or acceptance of accreditation of a laboratory under certain conditions. To parallel the acceptance process to accredit firewalled laboratories, the withdrawal of acceptance of accreditation of firewalled laboratories occurs by Commission vote. In order to maintain the parallel structure of Commission acceptance of accreditation, the Commission does not require a vote to withdraw or suspend acceptance of accreditation of independent or governmental laboratories.

F. Recordkeeping

(*Comment 27*) One commenter suggests modifying the document retention requirement of proposed § 1112.25(a) (1) to specify that only "test reports and technical records that are directly related and material to the scope of the laboratory's acceptance related to that testing" must be retained under the rule.

(*Response 27*) The proposed rule requires third party conformity assessment bodies to keep "test reports and technical records *related* to tests conducted for purposes of section 14 of the CPSA" (emphasis added). The commenter does not provide any information regarding the advantage of limiting the retention to those records that are "directly related and material" to the laboratory's testing for purposes of section 14 of the CPSA. Moreover, we are not sure that the suggested change would make a difference in the records that conformity assessment bodies would be required to keep. Therefore, we decline to make the commenter's recommended change.

(*Comment 28*) One commenter suggests modifying proposed § 1112.25(a) (2) to require only that the subcontractor laboratory's test report be "available with the prime contractor laboratory's test report" and not necessarily "appended to" it.

(*Response 28*) We agree with the commenter and will revise § 1112.25(a) (2) of the final rule to require making the subcontractor's laboratory test report available to the CPSC upon request, but not necessarily appended to the prime contractor's test report. We note that appending a subcontractor's test report would satisfy the requirement to make the report available.

(*Comment 29*) One commenter recommends modifying proposed § 1112.25(b) to require that documents required to be retained be provided to the CPSC, upon request, within "48 hours or within a reasonable time given the particular circumstances." The commenter also asserts that we should require only that English translations of documents be supplied to the CPSC "that are relevant and reasonably necessary with regard to the CPSC's specific inquiry or investigation."

(*Response 29*) We decline to make the commenter's recommended change to § 1112.25(b) regarding changing "48 hours" to "48 hours or within a reasonable time given the particular circumstances" when records are requested by the CPSC. However, we are revising § 1112.25(b) of the final rule to remove the "within 48 hours" language in the proposed rule and replace it with "such as through an Internet Web site." The revised language is consistent with the recordkeeping language in 16 CFR part 1107 (testing and labeling rule) and 16 CFR part 1109 (component part testing rule), which require submission of records upon request, but do not specify a time frame within which the records must be submitted and allow for submittal of electronic records "such as through an Internet Web site." Implicit in the requirement to submit records to the CPSC upon request is the commenter's concept of "within a reasonable time given the particular circumstances." The time frame necessary to respond to a document request by the CPSC, by its nature, must be determined on a case-by-case basis. Therefore, stating an explicit time frame, such as "48 hours," as the proposed rule specified, would not fit the many different circumstances that might occur when the CPSC requests records.

Regarding the commenter's suggestion that we should only require English translations of documents "that are relevant and reasonably necessary with regard to the CPSC's specific inquiry or investigation," the documents required in §§ 1112.25(a)(1)-(4) of the final rule are always considered to be "relevant and reasonably necessary with regard to the CPSC's specific inquiry or investigation." Hence, that is the reason for the requirement to maintain those records. Therefore, we decline to make the commenter's recommended change because the proposed and final rules inherently require maintaining records "that are relevant and reasonably necessary with regard to the CPSC's specific inquiry or investigation."

(*Comment 30*) One commenter recommends that we modify the proposed rule to clarify generally that "except for the status of an accepted laboratory, confidential business information, copyrighted information and trademarks, trade secrets and other information and documents provided to the CPSC by a laboratory under this rule is strictly protected from any third party disclosure under the all applicable laws, including, without limitation, the Consumer Product Safety Act."

(*Response 30*) We decline the commenter's recommendation because it is unnecessary to clarify the final rule by adding the language requested by the commenter. Confidential business information, copyrighted information and trademarks, trade secrets, and other information and documents provided to the CPSC by a laboratory are all subject to protections from third party disclosure or other protections under existing applicable laws, and the final rule does not change that.

G. Definitions

(*Comment 31*) A commenter notes that the proposed rule defined a "quality manager" for an accredited laboratory as having "defined responsibility and authority for ensuring the management system related to quality is implemented and followed at all times." The commenter states that a laboratory may institute an ISO 9000-compliant management system and "may not address the fulfillment of ISO/IEC 17025, which may NOT include competence requirements for testing." The commenter asserts that the definition appears to refer only to compliance with the management system and not to all sections of ISO/IEC 17025:2005(E).

(*Response 31*) The definition of a "quality manager" provided in the Audit Final Rule (16 CFR 1112.3, *Definitions* is the same as the definition of a "quality manager" in section 4.1.5.i of ISO/IEC 17025:2005(E). We agree with the commenter that, regardless of the definition of a "quality manager," a laboratory must comply with all the requirements of ISO/IEC 17025:2005(E) in order for its accreditation to be accepted by the CPSC.

H. Retrospective Testing

(*Comment 32*) One commenter notes that most of the previous NORs have provided for "retrospective testing" by laboratories, *i.e.*, CPSC recognition of testing and certification using the new standard after the date of the method's initial publication by the agency and before the NOR formally goes into effect. The commenter also notes that the two new CPSC lead substrate test methods have already been posted on the CPSC Web site, including a reference in the laboratory accreditation application page of that site, which indicates that laboratories can now begin applying for private accreditation. Thereafter, CPSC acceptance, to these new methods, should be allowed, despite the fact that there has been no retrospective testing allowance provided for in the proposed rule. The commenter recommends that the final rule allow retrospective testing using the new methods, effective back to April 10, 2012, the date those new methods were first published by the CPSC.

(*Response 32*) We agree with the commenter regarding allowing retrospective testing for the new CPSC lead substrate test methods, CPSC–CH–E1001–08.2 and CPSC–CH–E1002–08.2, and we describe the circumstances where retrospective testing under those test methods and others will be accepted by the CPSC in section III.B.3.b of the preamble.

III. Description of the Final Rule

A. Subpart A—Purpose and Definitions

1. Purpose (§ 1112.1)

This section of the final rule, describing the major topics addressed in part 1112, is substantially the same as proposed. As in the proposal, this section notes that the part defines the term "third party conformity assessment body" and describes the types of third party conformity assessment bodies whose accreditations are accepted by the CPSC to test children's products under section 14 of the CPSA. This section notes that part 1112 describes the requirements and procedures for becoming a CPSC-accepted third party conformity assessment body; the audit requirement applicable to third party conformity assessment bodies; how a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body; the grounds and procedures for withdrawal or suspension of CPSC acceptance of accreditation of a third party conformity assessment body; and how an individual may submit information alleging grounds for adverse action. The description of the purpose in § 1112.1 of the final rule is unchanged from the proposed rule, with the following exception. Proposed § 1112.1 used the phrase "that are accepted by" when referring to CPSC acceptance of a third party conformity assessment body's acceptance of accreditation by the CPSC. The final rule replaces the phrase "that are accepted by" used in proposed § 1112.1 with "whose accreditations are accepted by" in the final rule because the revised language describes more accurately the CPSC acceptance of the accreditation process. This change is not a substantive change and has been made throughout the rule, where appropriate, for consistency.

2. Definitions (§ 1112.1)

a. Definitions Amending the Audit Rule

Proposed § 1112.3 amended two definitions that appear in the audit final rule. One definition is the term "Audit." An audit of a CPSC-accepted laboratory consists of two parts: the reassessment portion, which is conducted by the accreditation body, and the examination portion, which is conducted by the CPSC. We did not receive any comments on this proposed definition and are finalizing the definition as proposed.

The other definition from the audit rule that the Commission proposed to amend is "CPSC." The rule discusses certain tasks that must be accomplished by the Commission body, as opposed to the CPSC as an agency. Thus, to distinguish between the Commission, as a body, as opposed to the agency, as a whole, the proposed rule, for purposes of part 1112 only, revised the definition of "CPSC" to mean the U.S. Consumer Product Safety Commission as an agency. The definition of "CPSC" in the final rule is unchanged from the proposed rule.

b. Other Definitions

Final § 1112.3 creates the following nine definitions; all are the same as proposed:

Accept accreditation: The rule defines this term consistent with its use in section 14 of the CPSA. *See, e.g.*, 15 U.S.C. 2063(e)(1). The definition means that the CPSC has positively disposed of an application by a third party conformity assessment body to test children's products pursuant to a particular children's product safety rule, for purposes of the testing required in section 14 of the CPSA.

Commission: The rule defines "Commission" to mean the body of Commissioners appointed to the U.S. Consumer Product Safety Commission. In contrast, the agency as a whole was referred to, in this part, as the CPSC.

CPSA: The rule defines this acronym to mean the Consumer Product Safety Act, 15 U.S.C. 2051–2089.

Notice of requirements: The rule defines this term to mean a publication that provides the minimum qualifications necessary for a laboratory to become CPSC-accepted to test

children's products pursuant to a particular children's product safety rule.

Scope: The rule defines this term to mean the range of particular children's product safety rules and/or test methods to which a laboratory has been accredited and for which it may apply for CPSC acceptance of its accreditation.

Suspend: The rule defines this term consistent with its use in section 14(e) of the CPSA, which the final rule implements. The proposed rule defined this term to mean that the CPSC has removed, for purposes of the testing of children's products required in section 14 of the CPSA, its acceptance of a laboratory's accreditation, due to the laboratory's failure to cooperate in an investigation under this part.

Third party conformity assessment body: The rule defines this term to mean a laboratory. The preamble to the proposed rule discusses the development of this definition in detail. *See* 77 FR at 31109. In the preamble to this rule, for ease of reference, and for the convenience of the reader, the word "laboratory" is used interchangeably with "third party conformity assessment body." In the regulatory text, for clarity, only the full term, "third party conformity assessment body" is used.

Undue influence: The rule defines "undue influence" to mean that a manufacturer, private labeler, governmental entity, or other interested party affects a laboratory, such that commercial, financial, and other pressures compromise the integrity of its testing processes or results. The preamble to the proposed rule discusses the development of this definition in detail. *See* 77 FR at 31109.

Withdraw: The rule defines this term consistent with its use in section 14(e) of the CPSA. The proposed rule defined "withdraw" to mean that the CPSC removes its prior acceptance of a laboratory's accreditation pursuant to a particular children's product safety rule for purposes of the testing of children's products required in section 14 of the CPSA.

B. Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

1. What are the types of third party conformity assessment bodies? (§ 1112.11)

This section describes, for purposes of part 1112, the three types of third party conformity assessment bodies: independent, firewalled, and governmental. Section 1112.11(a) describes an "independent laboratory" as a third party conformity assessment body that is neither owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory, nor owned or controlled, in whole or in part, by a government.

Section 1112.11(b) describes the circumstances that result in firewalled status. The rule considers a laboratory "firewalled" if it is owned, managed, or controlled by a manufacturer or private labeler of a children's product. The rule considers a laboratory owned by a trade association to be firewalled. Like a manufacturer, an association of manufacturers is in a position to exert undue influence on a laboratory owned, managed, or controlled by the association. The undue influence may come in the form of an expectation that special consideration will be given to the test results of association members or by discouraging reports of attempted undue influence by an association member.

A laboratory would be considered to be "owned, managed, or controlled" by a manufacturer or private labeler if one (or more) of three characteristics apply. The first is if the manufacturer or private labeler of the children's product holds a 10 percent or greater ownership interest, whether direct or indirect, in the laboratory, the laboratory would be considered firewalled. In this context, indirect ownership interest would be calculated by successive multiplication of the ownership percentages for each link in the ownership chain. We chose the 10 percent threshold ownership amount because it is our estimation that a manufacturer or private labeler who possesses less than a 10 percent ownership interest in a laboratory and does not otherwise exercise management or control of the laboratory, presents a low risk of exercising undue influence over the laboratory. In addition, our experience using this threshold over the past 3 years indicates that applicants understand it easily and have been able to supply such information. We note that the Federal Communications Commission also uses a 10 percent ownership threshold in its ownership disclosure requirements for applications. *See* 47 CFR 1.2112. The rule also includes indirect ownership because an entity that owns a manufacturer or private labeler that, in turn, owns a laboratory, has the same potential for conflict of interest concerning the independence of the testing process as a manufacturer or private labeler who owns a laboratory directly.

The second circumstance that signifies that a laboratory is firewalled arises when the laboratory and a manufacturer or private labeler of a children's product are owned by the same parent entity. In this instance, the manufacturer would not be a 10 percent owner of the laboratory, either directly or indirectly, but the interests of both entities would converge in a common parent. In such a case, the parent company would hold the interests of the manufacturer, and the laboratory should be firewalled to ensure that its testing processes are independent.

The third circumstance that results in firewalled status occurs when a manufacturer or private labeler of the children's product has the ability to appoint any of the laboratory's senior internal governing body (including, but not limited to, a board of directors); the ability to appoint the presiding official (including, but not limited to, the chair or president) of the laboratory's senior internal governing body; the ability to hire, dismiss, or set the compensation levels for laboratory personnel. The ability to appoint the president or any of the senior internal governing body or to make personnel decisions indicates management and/or control of the laboratory. The preamble to the proposed rule discusses in more detail the development of the firewalled requirements in proposed §§ 1112.11(b)(1)(ii)(A)–(C). *See* 77 FR at 31109–10. The Commission has chosen to change the proposed rule's standard of "a majority" of a laboratory's senior internal governing body to "any" member of that body. It is not clear by what means an independent laboratory that has any internal directors appointed by clients can remain completely independent, regardless of whether this ability is ever exercised. This was the only change to proposed §§ 1112.11(b)(1)(ii)(A)–(C) of the final rule.

The fourth circumstance described in the proposed rule that would have resulted in firewalled status arises when the laboratory is under a contract to a manufacturer or private labeler of the children's product and the contract explicitly limits the services the laboratory may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the laboratory. As discussed in the response to Comment 13 in section II.B. of the preamble, the Commission has decided to delete proposed § 1112.11(b)(1)(ii)(D) from the final rule.

Section 1112.11(c) implements the CPSA section 14(f)(2)(B) definition of a "governmental" laboratory as one "owned or controlled in whole or in part by a government." The proposed rule stated that, for purposes of this

part, "government" includes any unit of a national, territorial, provincial, regional, state, tribal, or local government. "Government" includes domestic, as well as foreign governmental entities. The legal framework for government ownership or control of a laboratory will vary across the world's jurisdictions, as will the potential for undue influence as a direct or indirect result of that government's ownership or control. The government of the laboratory in question may exercise control, based on the rule of law or otherwise, out of proportion to its ownership stake in a laboratory or to the laboratory's official independent status within the government organizational structure—a situation that Congress foresaw when it specified "in whole or in part" in section 14(f)(2)(B) of the CPSA. For that reason, the rule describes the ways in which a government could reasonably be seen to have a means of operational control over a laboratory that has a financial or organizational connection to that government.

As in the proposal, § 1112.11(c) lists six characteristics, any one of which triggers governmental laboratory status:

- A governmental entity holds a 1 percent or greater ownership interest, whether direct or indirect, in the laboratory (§ 1112.11(c)(1)). Selecting 1 percent as an ownership threshold is a practical matter of selecting the smallest whole number as an expression of ownership "in part." Indirect ownership interest would be calculated for these purposes in the same way as we propose to calculate it for purposes of indirect ownership of a firewalled laboratory, which is by successive multiplication of the ownership percentages for each link in the ownership chain;
- A governmental entity provides any direct financial investment or funding (other than fee-for-work) to the laboratory (§ 1112.11(c)(2)). This circumstance triggers governmental status because operational control of an enterprise may be affected by control or influence over its resources;
- A governmental entity has the ability to appoint a majority of the laboratory's senior internal governing body (such as, but not limited to, a board of directors); the ability to appoint the presiding official of the laboratory's senior internal governing body (such as, but not limited to, the chair or president); and/or the ability to hire, dismiss, or set the compensation level for laboratory personnel. The ability to appoint the president or a majority of the senior internal governing body, or to make personnel decisions, indicates, at least in part, control of the laboratory (§ 1112.11(c)(3));
- If any of the laboratory's management or technical personnel are government employees (§ 1112.11(c)(4)). Direct involvement by government personnel in the operation of a laboratory would represent control, in part;
- If the laboratory has a subordinate position to a governmental entity in its external organizational structure (§ 1112.11(c)(5)). We consider laboratories that are organizationally a part of, or formally linked to, the government to be governmental laboratories. In those cases, even if the government is not an owner, it has the means of controlling the laboratory; or
- If a government can determine, establish, alter, or otherwise affect the laboratory's testing outcomes, its budget or financial decisions, its organizational structure, or continued existence, or determines whether the laboratory may accept particular offers of work, then the laboratory would be considered governmental (§ 1112.11(c)(6)). The preamble to the proposed rule discusses the criteria for governmental laboratory status in further detail. *See* 77 FR at 31110–11. This provision of the final rule is unchanged from the proposed rule.

2. How does a third party conformity assessment body apply for CPSC acceptance? (§ 1112.13)

Section 1112.13 describes how a third party conformity assessment body may apply for CPSC acceptance of its accreditation. We are finalizing this section as proposed. Section 1112.13(a) describes the initial baseline requirements for any laboratory to apply. The laboratory must submit the following:

- A completed application, CPSC Form 223. The laboratory also must update its CPSC Form 223 whenever any information previously supplied on the form changes.
- A certificate of accreditation to ISO/IEC Standard 17025:2005(E), "General requirements for the competence of testing and calibration laboratories."
- Accreditation by an accreditation body that is a signatory to the ILAC–MRA. All laboratories also are required to furnish their statement of scope, and the statement of scope would have to identify clearly the CPSC rule(s) and/or test method(s) for which CPSC acceptance is sought.

The preamble to the proposed rule discusses the baseline requirements for accreditation in further detail. *See* 77 FR at 31111.

Section 1112.13(b) describes the additional requirements for firewalled laboratories. Section 14(f)(2)(D) of the CPSA requires that a laboratory may be accepted as firewalled only if the Commission, by order, finds that:

> (i) [Acceptance] of the accreditation of the conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and
>
> (ii) The conformity assessment body has established procedures to ensure that—
>
> (I) its test results are protected from undue influence by the manufacturer, private labeler, or other interested party;
>
> (II) The Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and
>
> (III) Allegations of undue influence may be reported confidentially to the Commission.

15 U.S.C. 2063(f)(2)(D).

To evaluate whether a laboratory satisfies these criteria, the rule requires that a laboratory seeking CPSC-accepted firewalled status submit copies of various documents to the CPSC. Such laboratories must submit:

- Copies of certain established policies and procedures. The laboratory would need to submit its policies and procedures that explain how test results are protected from undue influence by the manufacturer, private labeler, or other interested party. We also would require the laboratory to submit copies of established policies and procedures, indicating that the CPSC will be notified immediately of any attempt to hide or exert undue influence over test results, in addition to submitting the laboratory's policies and procedures explaining that an allegation of undue influence may be reported confidentially to the CPSC.
- Copies of training documents, including a description of the training program content, showing how employees are trained on the three policies just described. The rule requires this training annually.
- Training records listing staff members who received the training and bearing their signatures. The training records must include training dates, location, and the name and title of the individual providing the training.
- For firewalled laboratory applicants, two organizational charts. One chart must be an organizational chart(s) of the laboratory itself. It must include the names of all personnel, both temporary and permanent, and their reporting relationship within the laboratory. The other organizational chart must identify the reporting

relationships of the laboratory within the broader organization (using both position titles and staff names).

• A list of all laboratory personnel with reporting relationships outside of the laboratory. The list must identify the name and title of the relevant laboratory employee(s) and the names, titles, and employer(s) of all individuals outside of the laboratory to whom they report.

The preamble to the proposed rule discusses the additional requirements for firewalled laboratories in further detail. *See* 77 FR at 31112.

Section 14(f)(2)(B) of the CPSA mandates that the Commission may accept the accreditation of a governmental laboratory if:

> (i) To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
>
> (ii) The entity's testing results are not subject to undue influence by any other person, including another governmental entity;
>
> (iii) The entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under [section 14];
>
> (iv) The entity's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies accredited under [section 14]; and
>
> (v) The entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

15 U.S.C. 2063(f)(2)(B).

The rule restates these statutory requirements and provides that, in order for the CPSC to make the necessary determinations, governmental laboratories must submit the following:

• A description that can be in the form of a diagram. The description should illustrate the laboratory's relationships with other entities, such as government agencies and joint venture partners.

• Questionnaires completed by the governmental laboratory and the relevant governmental entity. The questionnaires are designed to elicit information related to the five statutory criteria.

• A copy of an executed memorandum that addresses undue influence. The memorandum must be on company letterhead, from the senior management of the laboratory, and directed to all laboratory staff. The memorandum must be in the primary written language used for business communications in the area in which the laboratory is located, and, if that language is not English, then the laboratory must provide an English translation. The memorandum must be displayed prominently at the laboratory for as long as the laboratory's accreditation is accepted by the CPSC. The memorandum must state certain policies and require that the laboratory's policy is to reject undue influence. Additionally, the memorandum must require employees to report immediately, to their supervisor or to another designated laboratory official, any attempt at undue influence. Finally, the memorandum must state that the laboratory will not tolerate violations of the undue influence policy.

• An attestation by a senior official of the governmental laboratory, who has the authority to make binding statements of policy on behalf of the laboratory. The official must attest to several statements related to the application, including that the laboratory does not receive and will not accept favorable treatment from any governmental entity with regard to products that are subject to CPSC jurisdiction and that are for export to the United States. Among other things, the senior official of the governmental laboratory must attest that the information in the laboratory's application continues to be accurate, unless the laboratory notifies the CPSC otherwise.

• If CPSC approval of a governmental laboratory application is dependent upon a recently changed circumstance in the relationship between the laboratory and the governmental entity, and/or a recently changed policy of the related governmental entity, the CPSC may require the relevant governmental entity to attest to the details of the new relationship or policy.

The preamble to the proposed rule discusses the additional requirements for firewalled laboratories in further detail. *See* 77 FR at 31112–13. This section of the final rule is unchanged from the proposed rule, with one exception. Proposed § 1112.13(c)(2)(iii)(3) would have required an executed memorandum, "From senior management," addressing undue influence. The description of the rule in the preamble to the proposed rule noted that the executed memorandum was required to be "from the senior management of the governmental laboratory." 77 FR at 31112. Final § 1112.13(c)(2)(iii)(3) has been revised by adding "of the third party conformity assessment body" after "from senior management," to clarify what "senior management" refers to in the codified text.

Section 1112.13(d) states that if a laboratory satisfies both the criteria for governmental status and the criteria for firewalled status, such a laboratory would be required to apply under both categories. This provision of the final rule is unchanged from the proposed rule.

As in the proposal, § 1112.13(e) requires all application materials to be in English.

Section 1112.13(f) requires that CPSC Form 223 and all required accompanying documentation be submitted electronically via the CPSC Web site. We have established an electronic application system that can be accessed via our Internet site at: *http://www.cpsc.gov/en/Business—Manufacturing/Lab-Accreditation/*. This provision of the final rule is unchanged from the proposed rule.

Section 1112.13(g) reserves the authority to require additional information from an applicant laboratory to determine whether the laboratory meets the relevant criteria. This provision allows us to gather additional information if the initial information supplied by an applicant laboratory is insufficient. The rule also states that the CPSC, before acting on an application, may verify the accreditation certificate and statement of scope directly from the laboratory's accreditation body. This provision of the final rule is unchanged from the proposed rule.

Section 1112.13(h) provides that a laboratory may retract an application at any time before the CPSC has acted on it. The rule notes, however, that a retraction would not end or nullify any enforcement action that the CPSC is authorized to pursue. This provision of the final rule is unchanged from the proposed rule.

Section 1112.13(i) contains the incorporation by reference language for ISO/IEC Standard 17025:2005(E): "General requirements for the competence of testing and calibration laboratories," which is required by the Office of the Federal Register.

3. When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method? (§ 1112.15)

a. Regulatory Text

Section 1112.15(a) states, consistent with section 14(a)(3) of the CPSA, that a laboratory may apply to the CPSC for acceptance of its accreditation to test a children's product to a particular CPSC rule or test method once the Commission has published the

requirements for accreditation of third party conformity assessment bodies to assess conformity with that rule or test method. This section notes that a laboratory may apply for acceptance for more than one CPSC rule or test method at a time. Once accepted by the CPSC, a third party conformity assessment body may apply at any time to expand the scope of its acceptance to include additional CPSC rules or test methods. Finally, this section states for purposes of section 14 of the CPSA, a laboratory may be authorized to issue test results only for tests that fall within the CPSC rules or test methods for which its accreditation has been accepted by the CPSC. This provision of the final rule is unchanged from the proposed rule.

Section 1112.15(b) lists the rules and test methods for which the Commission has published the requirements for accreditation of laboratories. The list in the final rule is current through the publication date of the final rule in the **Federal Register**. After the final rule publishes in the **Federal Register**, additions or revisions to this list in the future will be proposed as amendments to this section. The preamble to the proposed rule contains a more detailed discussion of the list of rules and test methods. *See* 77 FR at 31134–36. We are finalizing § 1112.15(b), as proposed, with the following exceptions.

The preamble to the proposed rule (77 FR at 31135) noted that proposed §§ 1112.15(b)(28) and (29), would contain two proposed revisions, which provided that, to be considered for CPSC-acceptance of accreditation to test for lead in children's metal products (including metal jewelry), an applicant laboratory may have in its scope of accreditation either Test Method CPSC–CH–E1001–08 (the original test method) and/or Test Method CPSC–CH–E1001–08.1 (the revised test method allowing alternative, simplified procedures) and/or the proposed revision of the test method, Test Method CPSC–CH–E1001–08.2 (allowing the use of XRF for certain metals).

Comment 3 in section II.A of the preamble notes that CPSC test method CPSC–CH–E1001–08.2 was not included as an acceptable test method in the codified text of proposed § 1112.15(b)(28). In the codified text of proposed § 1112.15(b)(28), test method CPSC–CH–E1001–08.2 was omitted inadvertently, although it was discussed in the preamble to the proposed rule, and we intended that test method CPSC–CH–E1001–08.2 be allowed under § 1112.15(b)(28). Therefore, § 1112.15(b)(28) of the final rule expressly allows for the use of test method CPSC–CH–E1001–08.2.

Additionally, as discussed in response to Comment 8 in section II.A of the preamble, CPSC staff has posted two new test methods, CPSC–CH–E1001–08.3 (*http://www.cpsc.gov/PageFiles/137829/CPSC-CH-E1001-08_3.pdf*) and CPSC–CH–E1002–08.3 (*http://www.cpsc.gov/PageFiles/137832/CPSC-CH-E1002-08_3.pdf*), on the CPSC Web site. Sections 1112.15(b)(28) and (29) of the final rule have been revised to add test method CPSC–CH–E1001–08.3 as an option for laboratory accreditation for lead content in metal jewelry and children's metal products. Section 1112.15(b)(30) of the final rule has also been revised to add test method CPSC–CH–E1002–08.3 as an option for laboratory accreditation for nonmetal products.

Finally, editorial changes have been made to §§ 1112.15(b)(28), (29), and (30) of the final rule. In §§ 1112.15(b)(28) and (29) of the final rule, the full name of the CPSC test method CPSC–CH–E1001–08, "Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)" is used the first time it appears in the provision; and thereafter, reference is made to the number of the test method because the name of the test method is clear from the context of the provision. The same change has been made to § 1112.15(b)(30) regarding the reference to CPSC Test Method CPSC–CH–E1002–08, "Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products." These changes are not intended to change those provisions substantively. Other than the changes just discussed, §§ 1112.15(b)(28) and (29) of the final rule have been finalized as proposed.

b. Retrospective Testing

In order to ease the transition to new third party testing requirements and to avoid a "bottlenecking" of products at laboratories at or near the effective date of required third party testing for children's product, the Commission, in the past, and under certain conditions, has accepted certifications based on testing that occurred prior to the effective date for third party testing. The CPSC will accept retrospective testing under certain conditions for six new or revised requirements for accreditation listed in § 1112.15(b) of the final rule. The retrospective testing conditions listed here are based on other standards that previously allowed for retrospective testing. The details for retrospective testing for particular standards or tests methods are discussed below.

Standards for Play Yards, Infant Swings, and Bed Rails (16 CFR parts 1221, 1223, and 1224)

We will accept retrospective testing for 16 CFR parts 1221 (play yards), 1223 (infant swings), and 1224 (portable bed rails) for the tests contained in those standards, if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC 17025:2005(E) by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity body accreditation must include testing in accordance with the applicable standard. For firewalled third party conformity assessment bodies, the firewalled third party conformity assessment body must be one that the Commission, by order, has accredited on or before the time that the children's product was tested, even if the order did not include the tests contained in the applicable standard at the time of initial Commission acceptance. For governmental third party conformity assessment bodies, accreditation of the body must be accepted by the Commission, even if the scope of accreditation did not include the tests contained in the applicable standard at the time of initial CPSC acceptance.
- The third party conformity assessment body's application for acceptance of its accreditation is accepted by the CPSC on or after May 24, 2012, and before June 10, 2013.
- The test results show compliance with the applicable standard(s).
- The children's product was tested on or after the date of publication in the **Federal Register** of the final rule for:

16 CFR part 1221, Play Yards (published August 29, 2012);

16 CFR part 1223, Infant Swings (published November 7, 2012); and/or

16 CFR part 1224, Portable Bed Rails (published February 29, 2012); and before June 10, 2013.

- The laboratory's accreditation remains in effect through June 10, 2013.

Testing for Metal and Nonmetal Children's Products (Test Methods CPSC–CH–E1001–08.2 and CPSC–CH–E1002–08.2)

We will accept retrospective testing using test methods CPSC–CH–E1001–08.2 (for testing children's metal products) and CPSC–CH–E1002–08.2 (for testing nonmetal children's products), if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC

17025:2005(E) by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity body accreditation must include test methods CPSC–CH–E1001–08.2 and/or CPSC–CH–E1002–08.2. For firewalled third party conformity assessment bodies, the Commission, by order, must have accredited it on or before the time that the children's product was tested, even if the order did not include the test methods CPSC–CH–E1001–08.2 and/or CPSC–CH–E1002–08.2 at the time of initial Commission acceptance. For governmental third party conformity assessment bodies, accreditation of the body must be accepted by the Commission, even if the scope of accreditation did not include at the time of initial CPSC acceptance the test methods CPSC–CH–E1001–08.2 and/or CPSC–CH–E1002–08.2.

- The third party conformity assessment body's application for acceptance of its accreditation to the revised test methods is accepted by the CPSC on or after May 24, 2012, and before June 10, 2013.
- The test results show compliance with limits on total lead content, as established in section 101 of the CPSIA.
- The children's product was tested on or after April 10, 2012 (the date the revised test methods were posted on the CPSC Web site) and before June 10, 2013.
- The laboratory's accreditation remains in effect through June 10, 2013.

Testing for Metal and Nonmetal Children's Products (Test Methods CPSC–CH–E1001–08.3 and CPSC–CH–E1002–08.3)

We will accept retrospective testing using test methods CPSC–CH–E1001–08.3 (for testing children's metal products) and CPSC–CH–E1002–08.3 (for testing nonmetal children's products), if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC t7025:2005(E) by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity body accreditation must include test methods CPSC–CH–E1001–08.3 and/or CPSC–CH–E1002–08.3. For firewalled third party conformity assessment bodies, the Commission, by order, must have accredited it on or before the time that the children's product was tested, even if the order did not include the test methods CPSC–CH–E1001–08.3 and/or CPSC–CH–E1002–08.3 at the time of imtial Commission acceptance. For governmental third party conformity assessment bodies, accreditation of the body must be accepted by the Commission, even if the scope of accreditation did not include at the time of initial CPSC acceptance the test methods CPSC–CH–E1001–08.3 and/or CPSC–CH–E1002–08.3.
- The third party conformity assessment body's application for acceptance of its accreditation to the revised test methods is accepted by the CPSC on or after May 24, 2012, and before June 10, 2013.
- The test results show compliance with limits on total lead content, as established in section 101 of the CPSIA.
- The children's product was tested on or after November 15, 2012 (the date the revised test methods were posted on the CPSC Web site) and before June 10, 2013.

The laboratory's accreditation remains in effect through June 10, 2013.

Toy Standard (ASTM F963–11)

We will accept retrospective testing on children's products conducted by a third party conformity assessment body accepted by the Commission for those tests in ASTM F963–t1 that have no equivalent, or functionally equivalent, test in ASTM F963–08, if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC 17025:2005(E) by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity assessment body accreditation must include the tests contained in the applicable nonequivalent section of ASTM F963–11. For firewalled third party conformity assessment bodies, the Commission, by order, must have accredited it, on or before the time that the children's product was tested, even if the order, at the time of initial Commission acceptance, did not include the nonequivalent tests contained in ASTM F963–11. For governmental third party conformity assessment bodies, accreditation of the body must be accepted by the Commission, even if the scope of accreditation at the time of initial CPSC acceptance did not include the nonequivalent tests methods contained in ASTM F963–t1.
- The third party conformity assessment body's application for acceptance of its accreditation is accepted by the CPSC on or after May 24, 2012, and before June 10, 2013.
- The test results show compliance with the nonequivalent section(s) of ASTM F963–11.
- The children's product was tested on or after February 22, 2012 (the date that the Commission voted to approve ASTM F963–11 as a mandatory standard), and before June 10, 2013.
- The third party conformity assessment body's accreditation remains in effect through June 10, 2013.

4. How will the CPSC respond to each application? (§ 1112.17)

This section establishes the procedures related to CPSC action on a third party conformity assessment body's application for CPSC acceptance of its accreditation. We are finalizing this section as proposed.

CPSC staff will review each application and may contact applicant laboratories with questions or to request submission of missing information.

Consistent with section 14(f)(2)(D) of the CPSA, an application from a firewalled laboratory will be accepted, by order of the Commission, if the Commission makes certain findings that are required by the statute; the required findings are enumerated. We intend that CPSC staff will act on applications from independent and governmental laboratories, as long as such action is consistent with a proper delegation of authority from the Commission.

The CPSC will communicate its decision on each application, in writing, to the applicant; the written decision may be by electronic mail.

5. How does the cpsc publish information identifying third party conformity assessment bodies that have been accepted? (§ 1112.19)

In accordance with section 14(a)(3)(E) of the CPSA, § 1112.19 provides that the CPSC will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations have been accepted and the scope of each acceptance. The rule states that the CPSC will update the listing regularly to account for changes of information and status, such as the addition of CPSC rules and/or test methods to a scope of accreditation; changes to accreditation certificates; or a new address. In addition, the CPSC will update the listing to indicate changes in status, such as if a laboratory voluntarily discontinues its participation with the CPSC, or if the CPSC suspends or withdraws its acceptance of a laboratory's accreditation. This provision of the final rule is unchanged from the proposed rule.

6. May a third party conformity assessment body use testing methods other than those specified in the relevant cpsc rule or test method? (§ 1112.21)

We are finalizing this section as proposed. It requires a CPSC-accepted laboratory to use only a test method specified by the CPSC for a particular CPSC rule and/or test method, for any test conducted for purposes of section 14 of the CPSA. The CPSC is requiring that test methods be specified for several reasons. First, a specified test method firmly establishes how to generate test results that are acceptable to the CPSC as indicative of compliance, so there is a common understanding between the CPSC and CPSC-accepted laboratories. Second, by specifying the test method, greater consistency among tests conducted at different CPSC-accepted laboratories is established. Variations between laboratories are reduced. Finally, the specified test method serves as a common procedure that accreditation bodies can use to evaluate a laboratory for a particular CPSC rule or test method. By evaluating to a CPSC-specified test method, accreditation bodies can determine whether the laboratory meets competency requirements to carry out a particular test.

7. May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA? (§ 1112.23)

This section of the final rule is unchanged from the proposed rule. It prohibits subcontracting of tests conducted for purposes of section 14 of the CPSA, unless the work is subcontracted to a CPSC-accepted laboratory. In addition, the CPSC's acceptance of the scope of accreditation of the subcontracting laboratory must include the test being subcontracted. The purpose of requiring a third party conformity assessment body subcontractor to be a CPSC-accepted laboratory is to promote competent and consistent test results across all laboratories that conduct testing of children's products under section 14 of the CPSA.

The provisions of part 1112 apply to all CPSC-accepted laboratories, even if they are a prime contractor and/or a subcontractor.

8. What are a third party conformity assessment body's recordkeeping responsibilities? (§ 1112.25)

This section requires third party conformity assessment bodies to retain certain records related to the tests conducted for purposes of section 14 of the CPSA. All required records must be legible. All test reports and technical records related to tests conducted for purposes of section 14 of the CPSA must be maintained for a period of at least 5 years from the date the test was conducted. These requirements are unchanged from the proposed rule.

Proposed § 1112.25(a)(2) required, in the case of a test report for a test conducted by a CPSC-accepted laboratory acting as a sub-contractor, that the prime contractor's test report identify clearly which test(s) was performed by a CPSC-accepted laboratory acting as a subcontractor(s), and the test report from the CPSC-accepted laboratory acting as a subcontractor must be appended to the prime contractor's test report. This provision of the final rule has been changed to require only that the subcontractor's laboratory test report be made available to the CPSC, upon request, but not necessarily appended to the prime contractor's test report, as discussed in the response to Comment 28 in section II.F of the preamble.

The remaining subsections of § 1112.25(a) are unchanged from the proposed rule. For purposes of section 14 of the CPSA, where a report, provided by the laboratory to a customer is different from the test record, the laboratory also must retain the report provided to the customer for a period of at least 5 years from the date the test was conducted.

Any and all laboratory internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have been applied to a test conducted for purposes of section 14 of the CPSA must be retained for a period of at least 5 years from the date such test was conducted.

As noted in the response to comment section of this preamble, we are modifying § 1112.25(b). The proposed rule stated that, upon request by the CPSC, the laboratory must make any and all of the records required by this section available for inspection, either in hard copy or electronic form, within 48 hours. If the records are not in English, copies of the original records must be made available to the CPSC within 48 hours, and an English translation of the records must be made available by the laboratory within 30 calendar days of the date the CPSC requested an English translation. As discussed in the response to Comment 29 in section II.F of the preamble, we are revising § 1112.25(b) to remove the "within 48 hours" language in the proposed rule and replacing it with: "Such as through an Internet Web site." The revised language is being added to be consistent with the recordkeeping language in 16 CFR part 1107 (testing and labeling rule) and 16 CFR part 1109 (component part testing rule), which require submission of records, upon request, but do not specify a time frame within which the records must be submitted and allows for electronic records "such as through an Internet Web site." Implicit in the requirement to submit records to the CPSC upon request, is the commenter's concept of "within a reasonable time given the particular circumstances." The time frame necessary to respond to a document request by the CPSC, by its nature, is required to be determined on a case-by-case basis. Therefore, stating an explicit time frame, such as "48 hours," as the proposed rule specified, would not fit the many different circumstances that might occur when the CPSC requests records.

9. Must a third party conformity assessment body allow cpsc inspections related to investigations? (§ 1112.27)

This section of the final rule is unchanged from the proposal. It requires that each CPSC-accepted third party conformity assessment body allow an officer or employee, duly designated by the Commission, to enter its facility and conduct an inspection, as a condition of the continued CPSC-acceptance of its accreditation. The CPSC will conduct such inspections in accordance with 16 CFR 1118.2, *Conduct and Scope of Inspections*. Failure to cooperate with such an inspection would constitute failure to cooperate with an investigation and would be grounds for suspension under § 1112.45. The preamble to the proposed rule discusses this condition of CPSC-acceptance in further detail. *See* 77 FR at 31118.

10. How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC? (§ 1112.29)

This section is unchanged from the proposed rule. It provides that a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted laboratory at any time and for any portion of its scope that is accepted by the CPSC. To discontinue voluntarily its participation as a CPSC-accepted laboratory, the laboratory must notify the CPSC in writing. This notification may be sent electronically. The notice must include the name, address, phone number, and electronic mail address of the laboratory and the person responsible for submitting the

request. The notice also must include the scope of the discontinuance; the beginning date for the discontinuance; a statement that the laboratory understands that in the future, if desired, it must reapply for acceptance of the accreditation scope for which it is requesting discontinuance; and verification that the person requesting the discontinuance has the authority to make such a request on behalf of the laboratory.

The CPSC may verify the information submitted in a notice of voluntary discontinuance. Either upon receipt of a notice for voluntary discontinuance as a CPSC-accepted third party conformity assessment body, or after verifying the information in a notice, the CPSC will update its Web site to indicate that the CPSC no longer accepts the accreditation of the third party conformity assessment body as of the date provided, and for the scope indicated in the notice. We may begin or continue an investigation related to an adverse action under this part, or any other legal action, despite the voluntary discontinuation of a laboratory.

C. Subpart C—Audit Requirements for Third Party Conformity Assessment Bodies

1. When must an audit be conducted? (§ 1112.35(b))

As explained in the audit final rule published in the **Federal Register** on May 24, 2012 (77 FR 30704), for purposes of part 1112, an audit consists of two parts. The first part, known as "reassessment," is an examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation. The reassessment portion of an audit is conducted, at a minimum, at the frequency established by its accreditation body. The second part, which we refer to as "examination," is the resubmission of the "Consumer Product Conformity Assessment Body Acceptance Registration Form" (CPSC Form 223) and accompanying documentation by the laboratory, and the CPSC's examination of the resubmitted materials.

We are finalizing these provisions as proposed. Section 1112.35(b) established when the examination portion of an audit must be conducted. This section requires each laboratory to submit a new CPSC Form 223 and applicable accompanying documentation no less than every 2 years.

This section notes that under § 1112.13(a)(1) a third party conformity assessment body must submit a new CPSC Form 223 whenever the information supplied on the form changes. If the third party conformity assessment body submits a new CPSC Form 223 to provide updated information, the third party conformity assessment body may elect to have the new CPSC Form 223 satisfy the audit requirement of § 1112.35(b)(1). If the laboratory also intends to satisfy the audit requirement of § 1112.35(b)(1), it must indicate that intent clearly when it submits a CPSC Form 223. In addition, the laboratory must upload all applicable accompanying documentation.

Section 1112.35(b)(3) states that, at least 30 days before the date by which a third party conformity assessment body must submit a CPSC Form 223 for audit purposes, CPSC will notify the body, in writing, of the impending audit deadline. The notice may be delivered by electronic mail. A laboratory may request an extension of the deadline for the examination portion of the audit, but it must indicate how much additional time is requested, and it also must explain why such an extension is warranted. The CPSC will notify the laboratory whether its request for an extension has been granted.

D. Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

1. What are the possible adverse actions the CPSC may take against a third party conformity assessment body? (§ 1112.41)

This section lists the possible adverse actions that the CPSC may take against a third party conformity assessment body: Denial of acceptance of accreditation; suspension of acceptance of accreditation; or withdrawal of acceptance of accreditation. It also states that withdrawal of acceptance of accreditation can be on a temporary or permanent basis, and the CPSC may immediately withdraw its acceptance in accordance with § 1112.53 of this part. This section of the final rule is unchanged from the proposed rule.

2. What are the grounds for denial of an application? (§ 1112.43)

This section, unchanged from the proposal, lists the grounds for denying an application for acceptance of accreditation from a third party conformity assessment body. It notes that failure to complete all information, and/or attestations, and/or failure to provide accompanying documentation, required in connection with an application, within 30 days after notice of deficiency, constitute grounds for denial of an application.

Submission of false or misleading information concerning a material fact(s) on an application, or concerning any other information provided to the CPSC related to a third party conformity assessment body's ability to become or remain a CPSC-accepted third party conformity assessment body are grounds for denial of an application.

The CPSC may deny an application if the applicant laboratory fails to satisfy the necessary requirements described in § 1112.13, such as ISO/IEC 17025:2005(E) accreditation by an ILAC–MRA signatory accreditation body for the scope for which acceptance of accreditation is being sought.

The CPSC's denial of an application will follow the process described in § 1112.51 of this part.

3. What are the grounds for suspension of CPSC acceptance? (§ 1112.45)

This section, unchanged from the proposal, provides that the CPSC may suspend acceptance of a laboratory's accreditation for any portion of its CPSC scope when the laboratory fails to cooperate with an investigation under section 14 of the CPSA. A third party conformity assessment body "fails to cooperate" when it does not respond to CPSC inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when the laboratory fails to cooperate with an investigatory inspection under § 1112.27.

A suspension will last until the laboratory complies, to CPSC's satisfaction, with required actions, as outlined in the initial notice described in proposed § 1112.51(b), or until the CPSC withdraws acceptance of the laboratory. The suspension of CPSC acceptance will be lifted if the CPSC determines that the third party conformity assessment body is cooperating sufficiently with the investigation. The suspension would be lifted as of the date of the CPSC's written notification to the laboratory, which may be by electronic mail, indicating that the CPSC is lifting the suspension.

4. What are the grounds for withdrawal of CPSC acceptance? (§ 1112.47)

This section, unchanged from the proposal, establishes the grounds upon which the CPSC may withdraw acceptance of the accreditation of a third party conformity assessment body for any portion of its CPSC scope.

One basis for withdrawal is when a manufacturer, private labeler,

governmental entity, or other interested party has exerted undue influence on such conformity assessment body, or otherwise interfered with, or compromised, the integrity of the testing process. The preamble to the proposed rule discusses the exertion of undue influence in further detail. 77 FR at 31120.

A second ground for withdrawal occurs when a third party conformity assessment body has failed to comply with an applicable protocol, standard, or requirement under subpart C of this part.

Finally, the CPSC may withdraw its acceptance of the accreditation of a laboratory if the laboratory fails to comply with any provision in subpart B of this part. Subpart B establishes the general requirements pertaining to third party conformity assessment bodies, such as requirements, processes, and timing related to applying for CPSC acceptance, recordkeeping requirements, and limitations on subcontracting.

5. How may a person submit information alleging grounds for adverse action, and what information should be submitted? (§ 1112.49)

This section, unchanged from the proposal, allows any person to submit information alleging that one or more of the grounds for adverse action exists. The information may be submitted in writing or electronically. Any request for confidentiality would need to be indicated clearly in the submission. This section also lists the information to be included in a submission alleging grounds for adverse action.

- The submission should include the name and contact information of the person making the allegation.
- The submission should identify the laboratory against whom the allegation is being made, as well as any officials or employees of the laboratory relevant to the allegation, in addition to contact information for those individuals.
- A person alleging a ground for adverse action should identify any manufacturers, distributors, importers, private labelers, or governmental entities relevant to the allegation, along with any officials or employees of the manufacturers, distributors, importers, private labelers, and/or governmental entities relevant to the allegation, as well as contact information for those individuals.
- A submission should include a description of acts and/or omissions to support each asserted ground for adverse action. Generally, the submission should describe, in detail, the basis for the allegation that grounds for adverse action against a laboratory exists. In addition to a description of the acts and omissions and their significance, a description may include: Dates, times, persons, companies, governmental entities, locations, products, tests, test results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations.
- A submission of grounds for adverse action should include a description of the impact of the acts and/or omissions, where known.

Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section.

6. What are the procedures relevant to adverse actions? (§ 1112.51)

This section, unchanged from the proposal, describes the process by which the CPSC may deny an application from a laboratory; suspend our acceptance of the accreditation of a laboratory; withdraw our acceptance of the accreditation of a laboratory on a temporary or permanent basis; and/or immediately temporarily withdraw our acceptance of the accreditation of a laboratory. The CPSC would use the *Procedures for Investigations, Inspections, and Inquiries*, 16 CFR part 1118, subpart A, to investigate under this part.

An investigation under this part may include: Any act the CPSC may take to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation; a submission alleging grounds for an adverse action; or any other information we receive, which relates to a laboratory's ability to become or remain a CPSC-accepted laboratory.

The CPSC will begin an investigation by providing written notice, which may be electronic, to the laboratory. The notice will inform the laboratory that we have received information sufficient to warrant an investigation, and describe the information received by the CPSC, as well as describe the investigative process. The notice also will inform the laboratory that failure to cooperate with a CPSC investigation is grounds for suspension.

Any notice sent by the CPSC under § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, constitutes a notice of investigation for purposes of this section. The examination portion of an audit under § 1112.33(c) of this part (which is currently in effect) constitutes an investigation for purposes of this section.

If, after investigation, the CPSC determines that grounds for adverse action exist, and the CPSC proposes to take an adverse action against a laboratory, the CPSC will notify the laboratory, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the CPSC's notice formally would begin a proceeding to suspend or withdraw our acceptance of its accreditation, as described in section 14(e) of the CPSA. The notice must:

- Include the proposed adverse action;
- Specify the grounds upon which the proposed adverse action is based;
- Provide findings of fact to support the proposed adverse action;
- When appropriate, specify actions a third party conformity assessment body must take to avoid an adverse action;
- Include consideration of the criteria set forth in § 1112.51(d)(1), when the proposed adverse action is withdrawal; and
- Specify the time period by which a laboratory has to respond to the notice. In general, the notice would inform the laboratory that it has 30 calendar days to respond. A laboratory may request an extension of the response time, but it must explain why such an extension is warranted and indicate the amount of additional time needed for a response.

Under § 1112.53, a CPSC-accepted laboratory would be able to continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

Section 1112.51(c) addresses how a laboratory may respond to the initial notice. The proposed rule required the laboratory's response to be in writing, which may be by electronic mail, and in English. The response may include, but would not be limited to, an explanation or refutation of material facts upon which the CPSC's proposed action is based, supported by documents or a sworn affidavit; results of any internal review of the matter, and action(s) taken as a result; or a detailed plan and schedule for an internal review.

The written response from the laboratory must state the laboratory's

reasons why the ground(s) for adverse action do not exist, or explain why the CPSC should not pursue the proposed adverse action, or any portion of the proposed adverse action. If a laboratory responds to the notice in a timely manner, the CPSC will review the response, and if necessary, conduct further investigation to explore or resolve issues bearing on whether grounds exist for adverse action, and the nature and scope of the proposed adverse action. If a laboratory does not submit a response to the notice in a timely manner, the CPSC may proceed, without further delay, to a Final Notice, as described in § 1112.51(e).

Section 1112.51(d) addresses proceedings for adverse actions. The CPSC will consider the gravity of the laboratory's action or failure to act, including:

- Whether the action or failure to act resulted in injury, death, or the risk of injury or death;
- Whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and
- Whether and when the third party conformity assessment body initiated remedial action.

In all cases, the CPSC will review and take under advisement, the response provided by the third party conformity assessment body. Except for cases under § 1112.51(d)(3), the CPSC will determine what action is appropriate under the circumstances. Any suspension or withdrawal of a firewalled laboratory would occur by order of the Commission.

The CPSC may withdraw its acceptance of the accreditation of a laboratory on a permanent or temporary basis.

If the CPSC withdraws its acceptance of accreditation of a laboratory, it may establish requirements for the reacceptance of the laboratory's accreditation. Any such requirements would be related to the reason(s) for the withdrawal.

Section 1112.51(e) describes the Final Notice for an adverse action. If, after reviewing a laboratory's response to a notice, and conducting additional investigation, where necessary, the CPSC determines that grounds for adverse action exist, the CPSC will send a Final Notice to the laboratory, in writing, which may be electronic. The Final Notice will state:

- The adverse action that we are taking;
- The specific grounds on which the adverse action is based;
- The findings of fact that support the adverse action;
- When the adverse action is withdrawal, the Final Notice would address the consideration of the criteria set forth in § 1112.51(d)(1);
- When the adverse action is withdrawal, whether the withdrawal is temporary or permanent, and, if the withdrawal is temporary, the duration of the withdrawal.
- The Final Notice will inform the laboratory that its accreditation is no longer accepted by the CPSC as of the date of the Final Notice of denial, suspension, or withdrawal for any specified portion(s) of its CPSC scope. The Final Notice also will inform the laboratory that the CPSC Web site will be updated to reflect adverse actions taken against a previously CPSC-accepted laboratory.
- The Final Notice will inform the laboratory whether it may submit a new application.

Upon receipt of a Final Notice, a third party conformity assessment body, as applicable, may submit a new application (if the Final Notice indicated such) or file an Administrative Appeal.

Section 1112.51(g) addresses Administrative Appeals. Except for cases covered in § 1112.51(g)(2), a laboratory could file an Administrative Appeal with the CPSC Office of the Executive Director. The Administrative Appeal must be sent by mail within 30 calendar days of the date on the Final Notice; § 1112.51(g) provides the appropriate mailing and electronic mail addresses. The rule requires all appeals to be in English; to explain the nature and scope of the issues appealed from in the Final Notice; and describe, in detail, the reasons why the laboratory believes that no grounds for adverse action exist. The Executive Director would issue a Final Decision within 60 calendar days of receipt of an Administrative Appeal. If the Executive Director's Final Decision would require more than 60 calendar days, the Executive Director would notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and if feasible, include an estimated date for a Final Decision to issue.

Section 1112.51(g)(2) addresses the circumstance in which the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled laboratory. Because suspensions and withdrawals of firewalled laboratories must occur by order of the Commission, Administrative Appeals, in these cases, would be filed with the Commission. The Administrative Appeal would need to be sent to the CPSC Office of the Secretary by mail within 30 calendar days of the date on the Final Notice. The rule requires all appeals to be in English, to explain the nature of the issues appealed in the Final Notice, and to describe in detail the reasons why the laboratory believes that no ground(s) exist for adverse action.

7. Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body? (§ 1112.53)

This section, unchanged from the proposal, establishes a means of withdrawing immediately and temporarily the accreditation of a laboratory in the rare circumstance that it would be in the public interest to remove our acceptance of the laboratory while we pursue an investigation and potential adverse action against the laboratory under § 1112.51.

When it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, the CPSC may immediately and temporarily withdraw our acceptance of a laboratory's accreditation for any portion of its CPSC scope while it pursues an investigation and potential adverse action. "In the public interest to protect health and safety" means that the CPSC has credible evidence that: (1) The integrity of test(s) being conducted under a scope for which we have accepted the laboratory's accreditation have been affected by undue influence or otherwise interfered with or compromised; and (2) any portion of a CPSC scope for which we have accepted the laboratory's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

When presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51 apply, except that instead of the time frames described in § 1112.51, the following time frames would apply when the CPSC pursues immediate and temporary withdrawal: The Initial Notice will generally inform the third party conformity assessment body that it has 7 calendar days to respond; an administrative appeal of a Final Notice of immediate and temporary withdrawal will be timely if filed within 7 calendar days of the date of the Final Notice.

If the laboratory is already the subject of an investigation or adverse action

process, the immediate and temporary withdrawal will remain in effect until either the CPSC communicates in writing that the immediate and temporary withdrawal has been lifted, the investigation concludes, and the CPSC does not propose an adverse action, or the adverse action process concludes with denial, suspension, or withdrawal.

If the laboratory is not already the subject of an investigation or adverse action process under § 1112.51, an investigation under § 1112.51(a) will be launched based on the same information that justified the immediate and temporary withdrawal.

8. Will the CPSC publish adverse actions? (§ 1112.55)

This section, unchanged from the proposal, states that, immediately following a final adverse action, the CPSC may publish the fact of a final adverse action, the text of a final adverse action, or a summary of the substance of a final adverse action. In addition, after issuance of a final adverse action, the CPSC will amend its Web site listing of CPSC-accepted laboratories to reflect the nature and scope of such adverse action.

E. Conduct and Scope of Inspections (16 CFR 1118.2)

The Commission's regulations on investigations, inspections, and inquiries under the CPSA are located at 16 CFR part 1118. Subpart A of part 1118 prescribes CPSC procedures for investigations, inspections, and inquiries. Section 1118.2 addresses topics such as how the CPSC conducts an inspection, which sites the CPSC has authority to inspect, and what the CPSC may view or obtain during an inspection.

The proposed rule sought to amend § 1118.2(a) in two ways. First, it included firewalled third party conformity assessment bodies as entities that the CPSC may inspect. This amendment is necessary to conform § 1118.2(a) with the statutory language in section 16(a) of the CPSA and the inspection provision at § 1112.27. Second, it removed the word "consumer" before the word "product" throughout paragraph (a), for accuracy. Some children's products regulated by the Commission and that are required by the CPSA to be third party tested are not regulated primarily under the CPSA. To be consistent with the inspection provision at § 1112.27, the references to "product" must be broad enough to include more than just products subject to CPSA safety standards. The final rule is unchanged from the proposed amendments to the existing provisions of § 1118.2 of the proposed rule.

IV. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA) requires that final rules be reviewed for their potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that the Commission prepare a final regulatory flexibility analysis when it promulgates a final rule. The final regulatory flexibility analysis must describe the impact of the rule on small entities. Specifically, the final regulatory flexibility analysis must contain:

- A succinct statement of the objectives of, and legal basis for, the rule;
- A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of, and where feasible, an estimate of, the number of small entities to which the rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements, and the type of professional skills necessary for the preparation of reports or records; and
- A description of the steps the agency has taken to reduce the significant economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the rule, and why each one of the other significant alternatives to the rule considered by the agency, which affect the impact on small entities, was rejected.

B. Comments on the Initial Regulatory Flexibility Analysis

The preamble to the proposed rule contained the initial regulatory flexibility analysis (IRFA). The CPSC received six public comments in response to the notice of proposed rulemaking. None of the comments addressed the content of the IRFA or its findings.

C. Description and Estimate of the Small Entities to Which the Final Rule Applies

The final rule applies to laboratories that intend to test children's products for conformance to children's product safety rules under Section 14 of the CPSA. The final rule does not impose any requirements on laboratories that do not intend to provide this service.

Although there are 5,198 firms in the United States classified as "testing laboratories" (NAICS code 54138), only a small subset of these laboratories is expected to provide third party conformity assessments of children's products for purposes of section 14 of the CPSA. As of October 5, 2012, the CPSC has accepted the accreditation of 92 laboratories located in the United States.[3] This number could increase, somewhat, over the next year or so, as new notices of requirements for accreditation are issued.

According to criteria established by the U.S. Small Business Administration (SBA), a laboratory is considered small if its revenue is less than $14 million a year. Of the 92 laboratories located in the United States with CPSC-accepted accreditations, 58 (or 63 percent) could be small businesses, according to the SBA criteria.

D. Compliance and Recordkeeping Requirements of the Rule

1. Acceptance of Accreditation

The final rule establishes the requirements for CPSC acceptance of the accreditation of a laboratory. Therefore, the rule applies only to laboratories that intend to provide third party testing of children's products in support of the certifications required by section 14(a)(2) of the CPSA. The final rule does not impose any requirements on laboratories that do not intend to provide these services.

The final rule requires that, as a condition of CPSC acceptance of its accreditation, the laboratory must be accredited to ISO/IEC 17025:2005(E). The accreditation must be made by an accreditation body that is a signatory to the ILAC–MRA. The scope of the accreditation must list the specific regulations or test methods contained in the product safety rules or in the notices of requirements that are required as the basis for certifying that children's products conform to the applicable product safety rules. This aspect of the final rule would simply codify the existing conditions for CPSC acceptance of accreditation that have been stated in every NOR published previously by the Commission.

[3] The CPSC has recognized the accreditation of 410 laboratories worldwide (as of January 15, 2013). However, most of the laboratories are located in other countries. Only domestic firms are considered for the purposes of the RFA.

The final rule requires that laboratories provide the Commission with their accreditation and scope documents. These records are normally generated during the accreditation process and can be provided to the CPSC electronically. The application for CPSC acceptance of accreditation would be accomplished using CPSC Form 223, an electronic application form. All of the information that is required to be supplied on the form should be readily available to the laboratory. The professional skills required to complete Form 223, and the related documents, are skills that a competent, accredited laboratory would be expected to possess.

The final rule also requires laboratories that are managed, owned, or controlled by a manufacturer or private labeler (or, firewalled laboratories) to submit additional materials, as described in § 1112.13(b). The acceptance of a firewalled laboratory's accreditation occurs, by Commission order, only after the Commission has made certain findings based on the additional documents.

The final rule also establishes additional requirements as described in § 1112.11 for Commission acceptance of the accreditation of laboratories that are owned or controlled, in whole or in part, by a government. The CPSC has accepted the accreditation of three conformity assessment bodies located in the United States that are owned by or affiliated with government entities, none of which meet the definition of a "small entity." Laboratories that are owned or controlled by foreign governments do not meet the definition of a "small entity" under the RFA.

In addition to the baseline requirements (accreditation to ISO/IEC 17025:2005(E) by a signatory to the ILAC–MRA and submission of CPSC Form 223 and related documents to the CPSC), laboratories that are owned or controlled by a government entity must provide additional information and materials to the CPSC, as described in § 1112.11, so that the CPSC can determine whether the laboratory satisfies the criteria for the acceptance of the accreditation of a governmental laboratory.

There are no fees payable to the CPSC associated with applying for CPSC acceptance of accreditation. The amount of time required to complete Form 223 and to submit the related documents to the CPSC is less than 1 hour for most laboratories. The amount of time could be somewhat higher for firewalled and governmental laboratories, which are required to submit additional materials.

The costs of obtaining ISO/IEC 17025:2005(E) accreditation by an ILAC–MRA accreditation body typically include: a one-time application fee, an annual fee for each field in which the laboratory is accredited, and an assessment fee. These charges will vary, somewhat, among accreditation bodies; but representative charges, based on the published fee schedule of one accreditation body are: $800 for the initial application fee, $1,300 per field for the annual fee, and $135 per hour per assessor. A representative of an accreditation body stated that assessments can take from 1 to 5 days, with 2.5 days being about average. The laboratory will also probably be charged for the travel, lodging, and meals of the assessor(s) conducting the assessment.

Based on the above discussion, a laboratory seeking accreditation in one field of testing can expect to pay around $4,800 in fees, plus travel, lodging, and meal expenses. The cost could be higher if the assessment takes longer than 2.5 days. If the laboratory is seeking accreditation in more than one field, such as chemical and mechanical testing, the cost will be higher because there will be additional fees for each field, and the assessment will likely take more time. There will be some cost to the laboratory in terms of laboratory personnel, who must prepare documents for the assessment and also work with the assessors during the assessment.

If a laboratory is already accredited to ISO/IEC 17025:2005(E) by an accreditation body that is a signatory to the ILAC–MRA, and the laboratory is seeking simply to expand its scope of accreditation to include specific CPSC tests, then the cost to the laboratory will be substantially less. In some cases, if the scope already includes closely related tests, the accreditation body might be willing to add the CPSC tests to the scope without additional charges. In other cases, there could be some administrative or assessment charges, but these would be less than what would be required for a full initial assessment.

For most children's product safety rules, the required test methods were specified in the regulation that established the safety rule. However, in the case of the requirements for lead content of children's products, the test methods are specified in the notices of requirements for accreditation, which are included in the final rule. The final rule expands the list of acceptable test methods for measuring lead content to include the use of XRF for measuring the lead content of glass materials, crystals, and certain metals. Because XRF can be significantly less expensive than other approved test methods, such as inductively coupled plasma or atomic absorption spectrometry, this provision could lower laboratories' testing costs. Some or all of the cost reductions could be passed onto the consumer product manufacturers in the form of lower testing prices.

Each ILAC–MRA signatory accreditation body has requirements for the periodic reassessment of accredited laboratories. The Commission has established the auditing requirements for maintaining CPSC acceptance of a laboratory's accreditation in the separate, but related, rule on periodic audits (16 CFR §§ 1112.30 through 1112.39), which is currently in effect.

2. Recordkeeping Requirements

The final rule requires that third party conformity assessment bodies maintain certain records associated with the testing conducted for purposes of section 14 of the CPSA for at least 5 years. The retention requirement would apply to all test reports and technical records, records related to subcontracted tests, and customer reports, if different from the test record, if they are related to tests conducted for purposes of section 14 of the CPSA. Additionally, all internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that applied to a test conducted for purposes of section 14 of the CPSA must be retained for a period of at least 5 years from the date such test was conducted. The cost of storing the records for 5 years could be less than $200, if the records are stored in electronic format; but the costs could be several thousand dollars, or more, if stored on paper in commercial warehouse space.

Upon request by the CPSC, the third party conformity assessment body must make any and all of the records required by this section available for inspection, either in hard copy or electronic form. If the records are not in the English language, the third party conformity assessment body must make copies of the original (non-English language) records available to the CPSC, and they must make an English translation of the records available to the CPSC within 30 calendar days of the date the CPSC requested an English translation.

3. Grounds and Procedures for Adverse Actions Against Laboratories

The final rule also establishes the grounds and procedures that the CPSC would use to take adverse actions against a laboratory. Adverse actions include: Denying the acceptance of the

laboratory's accreditation, suspending the acceptance of the laboratory's accreditation for a period of time, or withdrawing the acceptance of the laboratory's accreditation on a temporary or permanent basis. Grounds for adverse actions include: Failing to comply with CPSC requirements; failing to cooperate with the CPSC during an investigation; and allowing a manufacturer or other party to exert undue influence on the testing process. Among other things, the rule establishes the requirements for the notices that the CPSC must provide to laboratories before taking adverse actions, the time limits for responses by the laboratories to the notices, and the appeal rights of the laboratories regarding proposals of adverse action.

During an investigation of an allegation, some costs would be incurred by the laboratory for actions such as making employees available for interviews with CPSC investigators and providing the CPSC with documents or records requested by the investigators and allowing CPSC investigators access to its facilities. The costs incurred would depend upon the scope of the investigation. If the CPSC proposed an adverse action against the laboratory, the laboratory could incur some cost in preparing a reply to the notice, if the laboratory chooses to reply. The number of investigations of laboratories that the CPSC may open is not known.

E. Economic Impact on Small Entities and Significant Alternatives Considered

1. Expected Economic Impact on Small Entities

Laboratories that intend to provide the third party testing services required by section 14 of the CPSA will incur some costs to obtain CPSC acceptance of their accreditation. If the laboratory is not already accredited to ISO/IEC 17025:2005(E) by an ILAC–MRA signatory, it can expect to incur fees of around $4,800. The fees could be higher if the laboratory sought accreditation in more than one field of testing or the assessment took more than 2.5 days. The costs could be significantly lower for laboratories that are already accredited to ISO/IEC 17025:2005(E) by a body that is an ILAC–MRA signatory. There will also be some cost to the laboratory to prepare documents for the assessment and to work with the assessors. If the CPSC opened an investigation of the laboratory, the laboratory would likely incur some costs in connection with the investigation. The final rule requires laboratories to maintain certain records for 5 years, which could also add to a laboratory's costs, depending upon how it maintains the records.

As noted, the requirements would apply only to those laboratories that intend to provide the third party testing services for purposes of certifying children's products under section 14 of the CPSA. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from providing the testing services to justify accepting the requirements as a business decision. Laboratories that do not expect to receive sufficient revenue from these services to justify accepting these requirements would not be expected to pursue accreditation for this purpose. Therefore, one would not expect the requirements to have a significant adverse impact on a substantial number of laboratories.

2. Alternatives Considered

Although the final rule is not expected to have a significant adverse impact on a substantial number of small entities, CPSC staff considered alternatives that could have reduced the costs associated with the accreditation process or providing the testing services to some laboratories. The alternatives considered were accepting the accreditation of laboratories that were not accredited by a signatory to the ILAC–MRA and allowing the use of XRF techniques for determining compliance with the lead content requirements for more materials.

a. Accepting the Accreditation of Laboratories Not Accredited by ILAC–MRA Signatories

CPSC staff considered accepting the accreditation of laboratories that have been accredited by accreditation bodies that are not signatories to the ILAC–MRA. This alternative could have reduced the cost of obtaining CPSC acceptance of their accreditation for laboratories accredited by bodies that were not ILAC–MRA signatories. Under the final rule, to gain CPSC acceptance of their accreditation, these laboratories would have to seek additional accreditation by a body that is a signatory to the ILAC–MRA, despite being accredited by an accrediting body that was not a signatory to the ILAC–MRA. This alternative would not have any impact on laboratories that are not accredited by any accreditation body.

This alternative was not included in the final rule because it would not meet the objectives that CPSC staff have identified for a program to meet the laboratory accreditation requirements in the CPSA. In establishing the requirements for the laboratory accreditation program, the CPSC staff considered timelines established by the CPSA and the fact that children's products destined for the U.S. market are manufactured in nations throughout the world and established several objectives for the laboratory accreditation program. These objectives were to:

- Delegate the core elements of a CPSC accreditation program to an entity that was established and had acceptance on a multinational level and that followed internationally recognized standards for assessing the competence of laboratories and for the processes and standards used by accreditation bodies that evaluate such laboratories. In addition, CPSC staff sought a program that included regular evaluation of the accreditation bodies to ensure those bodies continued to follow the same, internationally recognized, set of standards and procedures;
- Designate one entity that could bring on board, on a multinational level, a large number of accreditation bodies that could begin the process of accrediting laboratories in accordance with the CPSC specific requirements for a children's product safety rule; and
- Avoid designation to accreditation programs or entities that are recognized only in a specific region, nation, or locality.

In addition to the objectives outlined above, the Commission also seeks to keep the program as simple as possible, avoid any perceived notions of barriers to fair trade practices, and ensure that the program established would be manageable with agency resources. The Commission staff found that the ILAC–MRA signatory program met those objectives. Although CPSC staff recognizes that there are other types of accreditation organizations and accreditation bodies for different types of conformity assessment programs, some of these organizations are for very specific industry or governmental sectors or are only applicable to certain regions. Designations to such organizations would not meet all of the objectives established by CPSC staff for the laboratory accreditation program.

b. Allowing XRF Test Methods for Lead Content for More Materials

The CPSC has received a number of requests to allow more extensive use of XRF analysis in meeting the third party test requirements because XRF analysis is significantly less expensive than the other test methods for lead content testing. Based on the CPSC's continuing research of testing methods, the Commission has approved the use of certain XRF methods for determining

the lead content of homogenous polymer components and paints, and the final rule would further allow the use of certain XRF methods for determining the lead content of glass materials, crystals and certain metals. However, for other materials, CPSC staff has not determined that XRF is as effective, precise, and reliable as the approved methods. Therefore, the final rule does not expand the approved use of XRF to cover all materials or substances.

V. Paperwork Reduction Act

This rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (77 FR at 31126–30) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. We did not receive any comments concerning the information collection burden of the proposal, and the final rule does not make any changes to that burden. The OMB has approved the information collection requirements in this rule, and the OMB control number for such approval is OMB 3041–0156.

VI. Environmental Considerations

The final rule falls within the scope of the Commission's environmental review regulations at 16 CFR 1021.5(c)(1), which provide a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for product certification rules.

VII. Preemption

Executive Order 12988 (February 5, 1996) requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed regulation would be issued under authority of the CPSA and CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The preemptive effect of this rule would be determined in an appropriate proceeding by a court of competent jurisdiction.

VIII. Effective Date

The Commission proposed that the final rule would become effective 90 days after publication in the **Federal Register**. We received no comments regarding the effective date. Therefore, the final rule will become effective 90 days after publication of the final rule in the **Federal Register**.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Incorporation by reference, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1118

Administrative practice and procedure, Consumer protection, Investigations.

Therefore, the Commission amends Title 16 of the Code of Federal Regulations by adding:

Accordingly, the CPSC amends 16 CFR parts 1112 and 1118 as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Add § 1112.1 to read as follows:

§ 1112.1 Purpose.

This part defines the term "third party conformity assessment body" and describes the types of third party conformity assessment bodies whose accreditations are accepted by the CPSC to test children's products under section 14 of the CPSA. It describes the requirements and procedures for becoming a CPSC-accepted third party conformity assessment body; the audit requirement applicable to CPSC-accepted third party conformity assessment bodies; how a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body; the grounds and procedures for withdrawal or suspension of CPSC acceptance of the accreditation of a third party conformity assessment body; and how an individual may submit information alleging grounds for adverse action.

■ 3. Amend § 1112.3 by:

a. Revising the definitions of "Audit" and "CPSC," and

b. Adding definitions for "Accept accreditation," "Commission," "CPSA," "Notice of requirements," "Scope," "Suspend," "Third party conformity assessment body," "Undue Influence," and "Withdraw"

The revisions and additions read as follows:

§ 1112.3 Definitions.

* * * * *

Accept accreditation means that the CPSC has positively disposed of an application by a third party conformity assessment body to test children's products pursuant to a particular children's product safety rule, for purposes of the testing required in section 14 of the CPSA.

* * * * *

Audit means a systematic, independent, documented process for obtaining records, statements of fact, or other relevant information, and assessing them objectively to determine the extent to which specified requirements are fulfilled. An audit, for purposes of this part, consists of two parts:

(1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (a process known more commonly as a "reassessment"); and

(2) The resubmission of the "Consumer Product Conformity Assessment Body Acceptance Registration Form" (CPSC Form 223) and accompanying documentation by the third party conformity assessment body and the Consumer Product Safety Commission's (CPSC's) examination of the resubmitted CPSC Form 223 and accompanying documentation. Accompanying documentation includes the baseline documents required of all applicants in § 1112.13(a), the documents required of firewalled applicants in § 1112.13(b)(2), and/or the documents required of governmental applicants in § 1112.13(c)(2).

Commission means the body of Commissioners appointed to the Consumer Product Safety Commission.

CPSA means the Consumer Product Safety Act, 15 U.S.C. 2051–2089.

CPSC means the Consumer Product Safety Commission as an agency.

Notice of requirements means a publication that provides the minimum qualifications necessary for a third party conformity assessment body to have its accreditation accepted to test children's products for conformity with a particular children's product safety rule.

* * * * *

Scope means the range of particular CPSC safety rules and/or test methods to which a third party conformity assessment body has been accredited and for which it may apply for CPSC acceptance.

Suspend means the CPSC has removed its acceptance, for purposes of the testing of children's products required in section 14 of the CPSA, of a third party conformity assessment body's accreditation for failure to cooperate in an investigation under this part.

Third party conformity assessment body means a laboratory.

Undue influence means that a manufacturer, private labeler, governmental entity, or other interested party affects a third party conformity assessment body, such that commercial, financial, or other pressures compromise the integrity of its testing processes or results.

Withdraw means the CPSC removes its prior acceptance of a third party conformity assessment body's accreditation pursuant to a particular children's product safety rule for purposes of the testing of children's products required in section 14 of the CPSA.

■ 4. Add subpart B to read as follows:

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

Sec.

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

§ 1112.11 What are the types of third party conformity assessment bodies?

(a) *Independent.* Independent third party conformity assessment bodies are third party conformity assessment bodies that are neither owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body, nor owned or controlled, in whole or in part, by a government;

(b) *Firewalled.* A third party conformity assessment body must apply for firewalled status if:

(1) It is owned, managed, or controlled by a manufacturer or private labeler of a children's product;

(i) For purposes of determining whether a third party conformity assessment body is firewalled, "manufacturer" includes a trade association.

(ii) A manufacturer or private labeler is considered to own, manage, or control a third party conformity assessment body if any one of the following characteristics applies:

(A) The manufacturer or private labeler of the children's product holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(B) The third party conformity assessment body and a manufacturer or private labeler of the children's product are owned by a common "parent" entity; or

(C) A manufacturer or private labeler of the children's product has the ability to appoint any of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party conformity assessment body's senior internal governing body, the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel, regardless of whether this ability is ever exercised;

(2) The children's product is subject to a CPSC children's product safety rule that the third party conformity assessment body requests CPSC acceptance to test; and

(3) The third party conformity assessment body intends to test such children's product made by the owning, managing, or controlling entity for the purpose of supporting a Children's Product Certificate.

(c) *Governmental.* Governmental third party conformity assessment bodies are owned or controlled, in whole or in part, by a government. For purposes of this part, "government" includes any unit of a national, territorial, provincial, regional, state, tribal, or local government, and a union or association of sovereign states. "Government" also includes domestic, as well as foreign entities. A third party conformity assessment body is "owned or controlled, in whole or in part, by a government" if any one of the following characteristics applies:

(1) A governmental entity holds a 1 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(2) A governmental entity provides any direct financial investment or funding (other than fee for work);

(3) A governmental entity has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors); the ability to appoint the presiding official of the third party conformity assessment body's senior internal governing body (such as, but not limited to, chair or president); and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel;

(4) Third party conformity assessment body management or technical personnel include any government employees;

(5) The third party conformity assessment body has a subordinate position to a governmental entity in its external organizational structure (not including its relationship as a regulated entity to a government regulator); or

(6) Apart from its role as regulator, the government can determine, establish, alter, or otherwise affect:

(i) The third party conformity assessment body's testing outcomes;

(ii) The third party conformity assessment body's budget or financial decisions;

(iii) Whether the third party conformity assessment body may accept particular offers of work; or

(iv) The third party conformity assessment body's organizational structure or continued existence.

§ 1112.13 How does a third party conformity assessment body apply for CPSC acceptance?

(a) *Baseline Requirements.* Each third party conformity assessment body seeking CPSC acceptance must:

(1) Submit a completed Consumer Product Conformity Assessment Body Registration Form (CPSC Form 223 or Application). In submitting a CPSC Form 223, the third party conformity assessment body must attest to facts and characteristics about its business that will determine whether the third party conformity assessment body is independent, firewalled, or governmental. The third party conformity assessment body also must

attest that it has read, understood, and agrees to the regulations in this part. The third party conformity assessment body must update its CPSC Form 223 whenever any information previously supplied on the form changes.

(2) Submit the following documentation.

(i) *Accreditation certificate.* (A) The third party conformity assessment body must be accredited to the ISO/IEC Standard 17025:2005(E), "General requirements for the competence of testing and calibration laboratories."

(B) The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA).

(ii) *Statement of scope.* The third party conformity assessment body's accreditation must include a statement of scope that clearly identifies each CPSC rule and/or test method for which CPSC acceptance is sought. Although a third party conformity assessment body may include more than one CPSC rule and/or test method in its scope in one application, it must submit a new application if the CPSC has already accepted the third party conformity assessment body for a particular scope, and the third party conformity assessment body wishes to expand its acceptance to include additional CPSC rules and/or test methods.

(b) *Additional Requirements for Firewalled Third Party Conformity Assessment Bodies.* (1) A third party conformity assessment body may be accepted as a firewalled third party conformity assessment body if the Commission, by order, makes the findings described in § 1112.17(b).

(2) For the Commission to evaluate whether an applicant firewalled third party conformity assessment body satisfies the criteria listed in § 1112.17(b), and in addition to the baseline accreditation requirements in paragraph (a) of this section, a firewalled third party conformity assessment body applying for acceptance of its accreditation must submit copies of:

(i) The third party conformity assessment body's established policies and procedures that explain:

(A) How the third party conformity assessment body will protect its test results from undue influence by the manufacturer, private labeler, or other interested party;

(B) That the CPSC will be notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results; and

(C) That allegations of undue influence may be reported confidentially to the CPSC;

(ii) Training documents, including a description of the training program content, showing how employees are trained annually on the policies and procedures described in paragraph (b)(2)(i) of this section;

(iii) Training records, including a list and corresponding signatures, of the staff members who received the training identified in paragraph (b)(2)(ii) of this section. The records must include training dates, location, and the name and title of the individual providing the training;

(iv) An organizational chart(s) of the third party conformity assessment body that includes the names of all third party conformity assessment body personnel, both temporary and permanent, and their reporting relationship within the third party conformity assessment body;

(v) An organizational chart(s) of the broader organization that identifies the reporting relationships of the third party conformity assessment body within the broader organization (using both position titles and staff names); and

(vi) A list of all third party conformity assessment body personnel with reporting relationships outside of the third party conformity assessment body. The list must identify the name and title of the relevant third party conformity assessment body employee(s) and the names, titles, and employer(s) of all individuals outside of the third party conformity assessment body to whom they report;

(c) *Additional Requirements for Governmental Third Party Conformity Assessment Bodies.* (1) The CPSC may accept a governmental third party conformity assessment body if the CPSC determines that:

(i) To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose third party conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;

(iv) The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and

(v) The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

(2) For the CPSC to evaluate whether a governmental third party conformity assessment body satisfies the criteria listed in paragraph (c)(1) of this section, and in addition to the baseline accreditation requirements in paragraph (a) of this section, a governmental third party conformity assessment body seeking CPSC-accepted status must submit:

(i) *Description.* A description illustrating the relationships with other entities, such as government agencies and joint ventures partners. The description may be in the form of a diagram;

(ii) *Responses to questionnaires.* The CPSC will provide a governmental third party conformity assessment body applicant with a questionnaire and will provide a separate questionnaire to the affiliated governmental entity;

(iii) *Executed memorandum.* A copy of an executed memorandum addressing undue influence;

(A) The memorandum must be:

(*1*) Addressed to all staff of the third party conformity assessment body;

(*2*) On company letterhead;

(*3*) From senior management of the third party conformity assessment body;

(*4*) In the primary written language used for business communication in the area where the third party conformity assessment body is located; if that language is different than English, an English translation of the executed memorandum must also be provided to the CPSC;

(*5*) Displayed prominently for staff reference for as long as the accreditation of the third party conformity assessment body whose accreditation is accepted by the CPSC; and

(B) The memorandum must state that:

(*1*) The policy of the laboratory is to reject undue influence by any manufacturer, private labeler, governmental entity, or other interested party, regardless of that person or entity's affiliation with any organization;

(2) Employees are required to report immediately to their supervisor or any other official designated by the third party conformity assessment body about any attempts to gain undue influence; and

(3) The third party conformity assessment body will not tolerate violations of the undue influence policy.

(iv) *Attestation.* A senior officer of the governmental third party conformity assessment body, who has the authority to make binding statements of policy on behalf of the third party conformity assessment body, must attest to the following:

(A) The third party conformity assessment body seeks acceptance as a governmental third party conformity assessment body under the CPSC's program of requirements for the testing of children's products;

(B) The official intends the attestation to be considered in support of any and all applications made by this third party conformity assessment body for acceptance of its accreditation by the CPSC, including future applications related to additional CPSC rules and/or test methods;

(C) The attestation, and any other document submitted in support of the application, is accurate in its representation of current conditions or policies at the third party conformity assessment body, to the best of the official's knowledge, information, and/or belief. The information in the attestation, and any other document submitted in support of the application, will be understood by the CPSC as continuing in its accuracy in every respect, until and unless notice of its revocation by an authorized officer of the third party conformity assessment body is received by the CPSC. The official understands that acceptance by the CPSC carries with it the obligation to comply with this part, in order to remain on the CPSC's list of accepted third party conformity assessment bodies. The attestation is submitted as a condition of acceptance of this laboratory as a governmental third party conformity assessment body by the CPSC.

(D) The word "government" in the attestation refers to any government (central, provincial, municipal, or other) in this third party conformity assessment body's country or administrative area and includes state-owned entities, even if those entities do not carry out governmental functions.

(E) With regard to consumer products to be distributed in commerce in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body does not receive, and will not accept from any governmental entity, treatment that is more favorable than that received by other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC. More favorable treatment for a governmental third party conformity assessment body includes, but is not limited to, authorization to perform essential export-related functions, while competing CPSC-accepted laboratories in the same country or administrative area are not permitted to perform those same functions.

(F) With regard to consumer products to be sold in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body's testing results are not accorded greater weight by any governmental entity that may be evaluating such results for export control purposes, compared to other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC.

(G) The third party conformity assessment body has an expressed policy, known to its employees, that forbids attempts at undue influence over any government authorities on matters affecting its operations.

(H) When a governmental third party conformity assessment body is owned or controlled by a governmental entity that also has any ownership or control over consumer product production, the senior officer of the applicant third party conformity assessment body must attest that the third party conformity assessment body will not conduct CPSC tests in support of a Children's Product Certificate for products for export to the United States that have been produced by an entity in which that governmental entity holds such ownership or control until it has applied for and been accepted by the Commission as, a dual governmental-firewalled third party conformity assessment body.

(v) *Governmental entity attestation.* In the event that the CPSC determines that its ability to accept a governmental third party conformity assessment body's application is dependent upon a recently changed circumstance in the relationship between the third party conformity assessment body and a governmental entity, and/or a recently changed policy of the related governmental entity, the CPSC may require the relevant governmental entity to attest to the details of the new relationship or policy.

(d) *Dual firewalled and governmental status.* A third party conformity assessment body that meets both the firewalled and the governmental criteria must submit applications under both firewalled and governmental categories.

(e) *English language.* All application materials must be in English.

(f) *Electronic submission.* The CPSC Form 223 and all accompanying documentation must be submitted electronically via the CPSC Web site.

(g) *Clarification and verification.* The CPSC may require additional information to determine whether the third party conformity assessment body meets the relevant criteria. In addition, the CPSC may verify accreditation certificate and scope information directly from the accreditation body before approving an application.

(h) *Retraction of application.* A third party conformity assessment body may retract a submitted CPSC Form 223 any time before the CPSC has acted on the submission. A retraction will not end or nullify any enforcement action that the CPSC is otherwise authorized by law to pursue.

(i) The Director of the Federal Register approves this incorporation by reference in paragraph (a)(2)(i) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ISO/IEC 17025:2005(E), "General requirements for the competence of testing and calibration laboratories," Second Edition, May 15, 2005 from the International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; Telephone +41 22 749 01 11, Fax +41 22 733 34 30; *http://www.iso.org/iso/home.htm.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal_regulations/ibr_locations.html.*

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

(a) Once the CPSC publishes the requirements for accreditation to a particular CPSC rule or test method, a third party conformity assessment body may apply to the CPSC for acceptance

to that scope of accreditation. An application may be made for acceptance of accreditation to more than one CPSC rule or test method. Once accepted by the CPSC, a third party conformity assessment body may apply at any time to expand the scope of its acceptance to include additional CPSC rules or test methods. A third party conformity assessment body may only issue test results for purposes of section 14 of the CPSA that fall within a scope for which the CPSC has accepted the third party conformity assessment body's accreditation.

(b) The CPSC has published the requirements for accreditation for third party conformity assessment bodies to assess conformity for the following CPSC rules or test methods:

(1) 16 CFR part 1203, Safety Standard for Bicycle Helmets;

(2) 16 CFR part 1215, Safety Standard for Infant Bath Seats;

(3) 16 CFR part 1216, Safety Standard for Infant Walkers;

(4) 16 CFR part 1217, Safety Standard for Toddler Beds;

(5) 16 CFR part 1219, Safety Standard for Full-Size Baby Cribs;

(6) 16 CFR part 1220, Safety Standard for Non-Full-Size Baby Cribs;

(7) 16 CFR part 1221, Safety Standard for Play Yards;

(8) 16 CFR part 1223, Safety Standard for Infant Swings;

(9) 16 CFR part 1224, Safety Standard for Portable Bed Rails;

(10) 16 CFR part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint. For its accreditation to be accepted by the Commission to test to 16 CFR part 1303, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09;

(ii) CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09.1;

(iii) ASTM F2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams.''

(11) 16 CFR part 1420, Safety Standard for All-Terrain Vehicles;

(12) 16 CFR 1500.86(a)(5), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Clacker Balls);

(13) 16 CFR 1500.86(a)(7) and (8), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Dive Sticks and Similar Articles);

(14) 16 CFR part 1501, Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts;

(15) 16 CFR part 1505, Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children;

(16) 16 CFR part 1510, Requirements for Rattles;

(17) 16 CFR part 1511, Requirements for Pacifiers;

(18) 16 CFR part 1512, Requirements for Bicycles;

(19) 16 CFR part 1513, Requirements for Bunk Beds;

(20) 16 CFR part 1610, Standard for the Flammability of Clothing Textiles;

(21) 16 CFR part 1611, Standard for the Flammability of Vinyl Plastic Film;

(22) 16 CFR part 1615, Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3–71);

(23) 16 CFR part 1616, Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF 5–74);

(24) 16 CFR part 1630, Standard for the Surface Flammability of Carpets and Rugs (FF 1–70);

(25) 16 CFR part 1631, Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70);

(26) 16 CFR part 1632, Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended);

(27) 16 CFR part 1633, Standard for the Flammability (Open Flame) of Mattress Sets;

(28) Lead Content in Children's Metal Jewelry. For its accreditation to be accepted by the Commission to test for lead content in children's metal jewelry, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(ii) CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iii) CPSC Test Method CPSC–CH–E1001–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iv) CPSC Test Method CPSC–CH–E1001–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(v) Section 1, ''Screening Test for Total Pb Analysis,'' from CPSC ''Standard Operating Procedure for Determining Lead (Pb) and its Availability in Children's Metal Jewelry,'' February 3, 2005;

(29) Limits on Total Lead in Children's Products: Children's Metal Products. For its accreditation to be accepted by the Commission to test for total lead content in children's metal products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(ii) CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iii) CPSC Test Method CPSC–CH–E1001–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iv) CPSC Test Method CPSC–CH–E1001–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(30) Limits on Total Lead in Children's Products: Nonmetal Children's Products. For its accreditation to be accepted by the Commission to test for lead content in nonmetal children's products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1002–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(ii) CPSC Test Method CPSC–CH–E1002–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(iii) CPSC Test Method CPSC–CH–E1002–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(iv) CPSC Test Method CPSC–CH–E1002–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(31) Limits on Phthalates in Children's Toys and Child Care Articles. For its accreditation to be accepted by

the Commission to test for phthalates in children's toys and child care articles, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–1001–09.3, "Standard Operating Procedure for Determination of Phthalates";

(ii) GB/T 22048–2008, "Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic";

(32) ASTM F963–11 "Standard Consumer Safety Specification for Toy Safety," and section 4.27 (toy chests) from ASTM F963–07ε1 "Standard Consumer Safety Specification for Toy Safety." The CPSC only requires certain provisions of ASTM F963–11 and Section 4.27 of ASTM F963–07ε1 to be subject to third party testing; and therefore, the CPSC only accepts the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

(i) ASTM F963–07ε1: Section 4.27—Toy Chests (except labeling and/or instructional literature requirements);

(ii) ASTM F963–11:

(A) Section 4.3.5.1(2), Surface Coating Materials—Soluble Test for Metals

(B) Section 4.3.5.2, Toy Substrate Materials

(C) Section 4.3.6.3, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders (except for cosmetics and tests on formulations used to prevent microbial degradation)

(D) Section 4.3.7, Stuffing Materials

(E) Section 4.5, Sound Producing Toys

(F) Section 4.6, Small Objects (except labeling and/or instructional literature requirements)

(G) Section 4.7, Accessible Edges (except labeling and/or instructional literature requirements)

(H) Section 4.8, Projections (except bath toy projections)

(I) Section 4.9, Accessible Points (except labeling and/or instructional literature requirements)

(J) Section 4.10, Wires or Rods

(K) Section 4.11, Nails and Fasteners

(L) Section 4.12, Plastic Film

(M) Section 4.13, Folding Mechanisms and Hinges

(N) Section 4.14, Cords, Straps, and Elastics

(O) Section 4.15, Stability and Overload Requirements

(P) Section 4.16, Confined Spaces

(Q) Section 4.17, Wheels, Tires, and Axles

(R) Section 4.18, Holes, Clearances, and Accessibility of Mechanisms

(S) Section 4.19, Simulated Protective Devices (except labeling and/or instructional literature requirements)

(T) Section 4.20.1, Pacifiers with Rubber Nipples/Nitrosamine Test

(U) Section 4.20.2, Toy Pacifiers

(V) Section 4.21, Projectile Toys

(W) Section 4.22, Teethers and Teething Toys

(X) Section 4.23.1, Rattles with Nearly Spherical, Hemispherical, or Circular Flared Ends

(Y) Section 4.24, Squeeze Toys

(Z) Section 4.25, Battery-Operated Toys (except labeling and/or instructional literature requirements)

(AA) Section 4.26, Toys Intended to Be Attached to a Crib or Playpen (except labeling and/or instructional literature requirements)

(BB) Section 4.27, Stuffed and Beanbag-Type Toys

(CC) Section 4.30, Toy Gun Marking

(DD) Section 4.32, Certain Toys with Nearly Spherical Ends

(EE) Section 4.35, Pompoms

(FF) Section 4.36, Hemispheric-Shaped Objects

(GG) Section 4.37, Yo-Yo Elastic Tether Toys

(HH) Section 4.38, Magnets (except labeling and/or instructional literature requirements)

(II) Section 4.39, Jaw Entrapment in Handles and Steering Wheels

(c) The Director of the Federal Register approves the incorporations by reference in paragraph (b) of this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the standards incorporated in this section at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal_regulations/ibr_locations.html.*

(1) ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.*

(i) ASTM F2853–10, "Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams," July 1, 2010;

(ii) ASTM F963–07ε1, "Standard Consumer Safety Specification for Toy Safety," March 15, 2007;

(iii) ASTM F963–11, "Standard Consumer Safety Specification for Toy Safety," December 1, 2011.

(2) Code of China, Room 2118, New Fortune International Plaza, No.71 Chaoyang Road, Chaoyang District, Beijing, 100123, China; *http://www.codeofchina.com/.*

(i) GB/T 22048–2008, National Standard of the People's Republic of China, "Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic," June 18, 2008;

(ii) [Reserved]

(3) CPSC National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; *www.cpsc.gov.*

(i) CPSC–CH–C1001–09.3, "Standard Operating Procedure for Determination of Phthalates", April 1, 2010;

(ii) CPSC–CH–E1001–08, "Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)", December 4, 2008;

(iii) CPSC–CH–E1001–08.1, "Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry), Revision", June 21, 2010;

(iv) CPSC–CH–E1001–08.2, "Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry), Revision", April 10, 2012;

(v) CPSC–CH–E1001–08.3, "Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry) Revision", November 15, 2012;

(vi) CPSC–CH–E1002–08, "Standard Operating Procedure for Determining Total Lead (Pb) in Non-metal Children's Products", February 1, 2009;

(vii) CPSC–CH–E1002–08.1, "Standard Operating Procedure for Determining Total Lead (Pb) in Non-metal Children's Products, Revised", June 21, 2010;

(viii) CPSC–CH–E1002–08.2, "Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products, Revision", April 10, 2012;

(ix) CPSC–CH–E1002–08.3, "Standard Operating Procedure for Determining Total Lead (Pb) in Non-metal Children's Products, Revision", November 15, 2012;

(x) CPSC–CH–E1003–09, "Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings", April 26, 2009;

(xi) CPSC–CH–E1003–09.1, "Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings", February 25, 2011;

(xii) CPSC "Standard Operating Procedure for Determining Lead (Pb) and its Availability in Children's Metal Jewelry", February 3, 2005.

§ 1112.17 How will the CPSC respond to each application?

(a) The CPSC staff will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information.

(b) The application of a firewalled third party conformity assessment body will be accepted by order of the Commission, if the Commission finds that:

(1) Acceptance of the accreditation of the third party conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party third party conformity assessment body; and

(2) The third party conformity assessment body has established procedures to ensure that:

(i) Its test results are protected from undue influence by the manufacturer, private labeler, or other interested party;

(ii) The CPSC is notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over test results; and

(iii) Allegations of undue influence may be reported confidentially to the CPSC.

(c) The CPSC will communicate its decision on each application in writing to the applicant, which may be by electronic mail.

§ 1112.19 How does the CPSC publish information identifying third party conformity assessment bodies that have been accepted?

The CPSC will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each acceptance. The CPSC will update the listing regularly to account for changes, such as the addition of new CPSC rules and/or test methods to its scope of accreditation, changes to accreditation certificates, new addresses, as well as changes to the status of a third party conformity assessment body due to voluntary discontinuance, suspension, and/or withdrawal. The CPSC will also list the firewalled or governmental status of accepted laboratories on the CPSC Web site.

§ 1112.21 May a third party conformity assessment body use testing methods other than those specified in the relevant CPSC rule or test method?

If the CPSC has specified a test method, a third party conformity assessment body must use that test method for any tests conducted for purposes of section 14 of the CPSA.

§ 1112.23 May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA?

(a) A CPSC-accepted third party conformity assessment body (which, for purposes of this section, also will be referred to as the prime contractor) may only subcontract work conducted for purposes of section 14 of the CPSA to other third party conformity assessment bodies whose accreditation has been accepted by the CPSC for the scope necessary for the subcontracted work. Violation of this provision constitutes compromising the integrity of the testing process and may be grounds for withdrawal of the CPSC's acceptance of the accreditation of the prime and/or subcontracting third party conformity assessment body.

(b) The provisions of this part apply to all CPSC-accepted third party conformity assessment bodies, even if they are a prime contractor and/or a subcontractor.

§ 1112.25 What are a third party conformity assessment body's recordkeeping responsibilities?

(a) The third party conformity assessment body must maintain the following records, which must be legible:

(1) All test reports and technical records related to tests conducted for purposes of section 14 of the CPSA must be maintained for a period of at least five years from the date the test was conducted;

(2) In the case of a test report for a test conducted by a CPSC-accepted third party conformity assessment body acting as a subcontractor, the prime contractor's test report must clearly identify which test(s) was performed by a CPSC-accepted third party conformity assessment body acting as a subcontractor(s), and the test report from the CPSC-accepted third party conformity assessment body acting as a subcontractor must be available upon request by CPSC.

(3) Where a report, for purposes of section 14 of the CPSA, provided by the third party conformity assessment body to a customer is different from the test record, the third party conformity assessment body also must retain the report provided to the customer for a period of at least five years from the date the test was conducted.

(4) Any and all third party conformity assessment body internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have applied to a test conducted for purposes of section 14 of the CPSA must be retained for a period of at least five years from the date such test was conducted.

(b) Upon request by the CPSC, the third party conformity assessment body must make any and all of the records required by this section available for inspection, either in hard copy or electronically, such as through an Internet Web site. If the records are not in the English language, the third party conformity assessment body must make copies of the original (non-English language) available to the CPSC within 48 hours, and they must make an English translation of the records available to the CPSC within 30 calendar days of the date the CPSC requested an English translation.

§ 1112.27 Must a third party conformity assessment body allow CPSC inspections related to investigations?

A third party conformity assessment body, as a condition of the continued CPSC-acceptance of its accreditation, must allow an officer or employee duly designated by the CPSC to enter and inspect the third party conformity assessment body for purposes of an investigation under this part. The CPSC will conduct such inspections in accordance with 16 CFR 1118.2. Failure to cooperate with such an inspection constitutes failure to cooperate with an investigation and is grounds for suspension under § 1112.45.

§ 1112.29 How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC?

(a) A third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body at any time and for any portion of its scope that is accepted by the CPSC. The third party conformity assessment body must notify the CPSC, in writing, which may be electronic. The notice must include:

(1) Name, address, phone number, electronic mail address for the third party conformity assessment body and the person responsible for submitting the request;

(2) Scope of the discontinuance;

(3) Beginning date for the discontinuance;

(4) Statement that the third party conformity assessment body understands that it must reapply for acceptance of the accreditation scope for which it is requesting discontinuance; and

(5) Verification that the person requesting the discontinuance has the authority to make such a request on behalf of the third party conformity assessment body.

(b) The CPSC may verify the information submitted in a notice of voluntary discontinuance.

(c) Upon receipt of a notice from a third party conformity assessment body that it wishes to discontinue voluntarily as a CPSC-accepted third party conformity assessment body, or after verifying the information in a notice, the CPSC will update its Web site to indicate that the CPSC no longer accepts the accreditation of the third party conformity assessment body for the scope indicated, as of the date provided in the notice.

(d) Notwithstanding a third party conformity assessment body's voluntary discontinuance as a CPSC-accepted third party conformity assessment body, the CPSC may begin or continue an investigation related to an adverse action under this part, or other legal action.

■ 5. Amend § 1112.35 by adding paragraph (b) to read as follows:

§ 1112.35 When must an audit be conducted?

* * * * *

(b) For the examination portion of the audit, which is conducted by the CPSC:

(1) Each third party conformity assessment body must submit a CPSC Form 223 for audit purposes no less than every two years. When a CPSC Form 223 is submitted for audit purposes, the third party conformity assessment body must submit any accompanying documentation that would be required if it were a new application.

(2) Under § 1112.13(a)(1), a third party conformity assessment body must submit a new CPSC Form 223 whenever the information supplied on the form changes. In the event that the third party conformity assessment body submits a new CPSC Form 223 to provide updated information, the third party conformity assessment body may elect to have the new CPSC Form 223 satisfy the requirement of paragraph (b)(1) of this section. If the third party conformity assessment body intends to have the new CPSC Form 223 treated as its submission for audit purposes, the third party conformity assessment body must make that intention clear upon submission, and it must submit any accompanying documentation that would be required if it were a new application.

(3) At least 30 days prior to the date by which a third party conformity assessment body must submit a CPSC Form 223 for audit purposes, the CPSC will notify the body in writing, which may be electronic, of the impending audit deadline. A third party conformity assessment body may request an extension of the deadline for the examination portion of the audit, but it must indicate how much additional time is requested and explain why such an extension is warranted. The CPSC will notify the third party conformity assessment body whether its request for an extension has been granted.

■ 6. Add subpart D to read as follows:

Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

Sec.

Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

§ 1112.41 What are the possible adverse actions the CPSC may take against a third party conformity assessment body?

(a) Potential adverse actions against a third party conformity assessment body include:

(1) Denial of Acceptance of Accreditation;

(2) Suspension of Acceptance of Accreditation; or

(3) Withdrawal of Acceptance of Accreditation.

(b) Withdrawal of acceptance of accreditation can be on a temporary or permanent basis, and the CPSC may immediately withdraw its acceptance in accordance with § 1112.53.

§ 1112.43 What are the grounds for denial of an application?

(a) The CPSC may deny an application for any of the following reasons:

(1) Failure to complete all information, and/or attestations, and/or failure to provide accompanying documentation, required in connection with an application within 30 days after notice of a deficiency by the CPSC;

(2) Submission of false or misleading information concerning a material fact(s) on an application, any materials accompanying an application, or on any other information provided to the CPSC related to a third party conformity assessment body's ability to become or to remain a CPSC-accepted third party conformity assessment body; or

(3) Failure to satisfy necessary requirements described in § 1112.13, such as ISO/IEC 17025:2005(E) accreditation by a ILAC–MRA signatory accreditation body for the CPSC scope for which acceptance of accreditation is being sought.

(b) The CPSC's denial of an application will follow the process described in § 1112.51.

§ 1112.45 What are the grounds for suspension of CPSC acceptance?

(a) The CPSC may suspend its acceptance of a third party conformity assessment body's accreditation for any portion of its scope when the third party conformity assessment body fails to cooperate with an investigation under section 14 of the CPSA. A third party conformity assessment body "fails to cooperate" when it does not respond to CPSC inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when it fails to cooperate with an investigatory inspection under § 1112.27.

(b) Suspension lasts until the third party conformity assessment body complies, to the satisfaction of the CPSC, with required actions, as outlined in the notice described in § 1112.51(b), or until the CPSC withdraws its acceptance of the third party conformity assessment body.

(c) If the CPSC determines that the third party conformity assessment body is cooperating sufficiently with the CPSC's investigation, the CPSC will lift the suspension. The suspension will lift as of the date of the CPSC's written notification to the third party conformity assessment body that the CPSC is lifting the suspension. The written notification may be by electronic mail.

§ 1112.47 What are the grounds for withdrawal of CPSC acceptance?

(a) A manufacturer, private labeler, governmental entity, or other interested party has exerted undue influence on such third party conformity assessment body or otherwise interfered with or compromised the integrity of the testing process.

(b) The third party conformity assessment body failed to comply with an applicable protocol, standard, or requirement under subpart C of this part.

(c) The third party conformity assessment body failed to comply with any provision in subpart B of this part.

§ 1112.49 How may a person submit information alleging grounds for adverse action, and what information should be submitted?

(a) *Initiating information.* Any person may submit information to the Commission, such as by writing to the U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by sending electronic mail to: *labaccred@cpsc.gov.* The submission must allege that one or more of the grounds for adverse action set forth in this part exists. Any request for confidentiality must be indicated clearly in the submission. The submission should include:

(1) Contact information, including a name and/or a method by which the CPSC may contact the person providing the information;

(2) Identification of the third party conformity assessment body against whom the allegation is being made, identification of any officials or employees of the third party conformity assessment body relevant to the allegation, and contact information for such individuals.

(3) Identification of any manufacturers, distributors, importers, private labelers, and/or governmental entities relevant to the allegation. The submission also should identify any officials or employees of the manufacturers, distributors, importers, private labelers, or governmental entities relevant to the allegation, and contact information for such individuals.

(4) Description of acts and/or omissions to support each asserted ground for adverse action. Generally, the submission should describe, in detail, the basis for the allegation that grounds for adverse action against a third party conformity assessment body exists. In addition to a description of the acts and omissions and their significance, a description may include: dates, times, persons, companies, governmental entities, locations, products, tests, test results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations;

(5) Description of the impact of the acts and/or omissions, where known.

(b) *Review of initiating information.* Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section.

§ 1112.51 What are the procedures relevant to adverse actions?

(a) *Investigation.* (1) Investigations under this part are investigations into grounds for an adverse action against a third party conformity assessment body.

(2) The Commission will use its *Procedures for Investigations, Inspections, and Inquiries,* 16 CFR part 1118, subpart A, to investigate under this part.

(3) An investigation under this part may include any act the CPSC takes to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation, a submission alleging grounds for an adverse action, or any other information received by the CPSC that relates to a third party conformity assessment body's ability to become or remain a CPSC-accepted third party conformity assessment body.

(4) The CPSC will begin an investigation under this part by providing written notice, which may be electronic, to the third party conformity assessment body. The notice will inform the third party conformity assessment body that the CPSC has received information sufficient to warrant an investigation, and it will describe the information received by the CPSC and the CPSC's investigative process. The notice also will inform the third party conformity assessment body that failure to cooperate with a CPSC investigation is grounds for suspension under § 1112.45.

(5) The notice sent by the CPSC under § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, which may be electronic, constitutes notice of investigation for purposes of this section. The examination portion of an audit under § 1112.33(c) constitutes an investigation for purposes of this section.

(b) *Initial notice.* If, after investigation, the CPSC determines that grounds for adverse action exist and proposes to take an adverse action against a third party conformity assessment body, the CPSC will notify the third party conformity assessment body, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the notice formally begins a proceeding to suspend or withdraw, as described in section 14(e) of the CPSA. The notice will contain:

(1) The proposed adverse action;

(2) Specific grounds on which the proposed adverse action is based;

(3) Findings of fact to support the proposed adverse action;

(4) When appropriate, specific actions a third party conformity assessment body must take to avoid an adverse action;

(5) When the proposed adverse action is withdrawal, consideration of the criteria set forth in paragraph (d)(1) of this section;

(6) The time period by which a third party conformity assessment body has to respond to the notice. In general, the notice will inform the third party conformity assessment body that it has 30 calendar days to respond. A third party conformity assessment body may request an extension of the response time, but they must explain why such an extension is warranted and the amount of additional time needed for a response; and

(7) Except under § 1112.53, a CPSC-accepted third party conformity assessment body may continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

(c) *Third party conformity assessment body response to initial notice.* A third party conformity assessment body's response must be submitted in writing, in English, and may be in the form of electronic mail. The response may include, but is not limited to, an explanation or refutation of material facts upon which the Commission's proposed action is based, supported by documents or sworn affidavit; results of any internal review of the matter and action(s) taken as a result; or a detailed plan and schedule for an internal review. The written response must state the third party conformity assessment body's reasons why the ground(s) for adverse action does not exist, or why the CPSC should not pursue the proposed adverse action, or any portion

of the proposed adverse action. If a third party conformity assessment body responds to the notice in a timely manner, the CPSC will review the response, and, if necessary, investigate further to explore or resolve issues bearing on whether grounds exist for adverse action and the nature of the proposed adverse action. If a third party conformity assessment body does not respond to the notice in a timely manner, the CPSC may proceed without further delay to a Final Notice, as described in paragraph (e) of this section.

(d) *Proceeding.* (1) In any proceeding to withdraw the CPSC's acceptance of a third party conformity assessment body's accreditation, the CPSC will consider the gravity of the third party conformity assessment body's action or failure to act, including:

(i) Whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) Whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) Whether and when the third party conformity assessment body initiated remedial action.

(2) In all cases, the CPSC will review and take under advisement the response provided by the third party conformity assessment body. Except for cases under paragraph (d)(3) of this section, the CPSC will determine what action is appropriate under the circumstances.

(3) If, after reviewing and taking under advisement the response provided by a CPSC-accepted firewalled third party conformity assessment body, the CPSC staff concludes that suspension or withdrawal of CPSC acceptance of accreditation is appropriate, staff will transmit its recommendation to the Commission for consideration. Any suspension or withdrawal of CPSC acceptance of accreditation of a firewalled third party conformity assessment body (including immediate and temporary withdrawal under § 1112.53) will be by order of the Commission.

(4) The CPSC may withdraw its acceptance of the accreditation of a third party conformity assessment body on a permanent or temporary basis.

(5) If the CPSC withdraws its acceptance of the accreditation of a third party conformity assessment body, the CPSC may establish conditions for the reacceptance of the accreditation of the third party conformity assessment body, under section 14(e)(2)(B)(ii) of the CPSA. Any such conditions would be related to the reason(s) for the withdrawal.

(e) *Final notice.* If, after reviewing a third party conformity assessment body's response to a notice and conducting additional investigation, where necessary, the CPSC determines that grounds for adverse action exist, it will send a Final Notice to the third party conformity assessment body, in writing, which may be electronic. The Final Notice will state:

(1) The adverse action that the CPSC is taking;

(2) Specific grounds on which the adverse action is based;

(3) Findings of fact that support the adverse action;

(4) When the adverse action is withdrawal, consideration of the criteria as set forth in paragraph (d)(1) of this section;

(5) When the adverse action is withdrawal, whether the withdrawal is temporary or permanent, and if temporary, the duration of the withdrawal;

(6) The third party conformity assessment body's accreditation is not accepted by the Commission as of the date of the Final Notice of denial, suspension, or withdrawal, for specified portion(s) of its CPSC scope. The CPSC Web site will be updated to reflect adverse actions to any previously CPSC-accepted third party conformity assessment bodies; and

(7) Whether the third party conformity assessment body may submit a new application.

(f) *Possible actions after final notice.* Upon receipt of a Final Notice, a third party conformity assessment body, as applicable, may:

(1) If the Final Notice indicates such, the third party conformity assessment body may submit a new application; or

(2) File an Administrative Appeal.

(g) *Administrative appeal.* (1) Except for paragraph (g)(2) of this section, the third party conformity assessment body may file an Administrative Appeal with the Office of the Executive Director.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Executive Director, Room 812, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov*.

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature and scope of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

(iv) If an Administrative Appeal is timely filed, the Executive Director will issue a Final Decision within 60 calendar days of receipt. If the Executive Director's Final Decision requires more than 60 calendar days, he or she will notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and, if feasible, include an estimated date for a Final Decision to be issued.

(2) In the case that the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled third party conformity assessment body, the firewalled third party conformity assessment body may file an Administrative Appeal with the Commission.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Secretary, Room 820, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov*.

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

§ 1112.53 Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?

(a) When it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, the CPSC may withdraw immediately and temporarily its acceptance of a third party conformity assessment body's accreditation for any portion of its CPSC scope while the CPSC pursues an investigation and potential adverse action under § 1112.51.

(1) For purposes of this part, "in the public interest to protect health and safety" means that the CPSC has credible evidence that:

(i) The integrity of test(s) being conducted under a scope for which the CPSC has accepted the third party conformity assessment body's accreditation, have been affected by undue influence or otherwise interfered with or compromised; and

(ii) The scope for which the CPSC has accepted the third party conformity assessment body's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/

or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

(2) When presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51 apply, except that instead of the timeframes described in § 1112.51, the following timeframes will apply when the CPSC pursues immediate and temporary withdrawal:

(i) The Initial Notice will generally inform the third party conformity assessment body that it has 7 calendar days to respond.

(ii) An administrative appeal of a Final Notice of immediate and temporary withdrawal will be timely if filed within 7 calendar days of the date of the Final Notice.

(b) If the third party conformity assessment body is already the subject of an investigation or adverse action process under § 1112.51, the immediate and temporary withdrawal will remain in effect until: the agency communicates in writing that the immediate and temporary withdrawal has been lifted; the investigation concludes and the agency does not propose an adverse action; or the adverse action process concludes with denial, suspension, or withdrawal.

(c) If the third party conformity assessment body is not already the subject of an investigation or adverse action process under § 1112.51, an investigation under § 1112.51(a) will be launched based on the same information that justified the immediate and temporary withdrawal.

§ 1112.55 Will the CPSC publish adverse actions?

Immediately following a final adverse action, the CPSC may publish the fact of a final adverse action, the text of a final adverse action, or a summary of the substance of a final adverse action. After issuance of a final adverse action, the CPSC will amend its Web site listing of CPSC-accepted third party conformity assessment bodies to reflect the nature and scope of such adverse action.

PART 1118—INVESTIGATIONS, INSPECTIONS, AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

■ 7. The authority citation for part 1118 is revised to read as follows:

Authority: 15 U.S.C. 2063; 15 U.S.C. 2065; 15 U.S.C. 2068; 15 U.S.C. 2076; sec. 3, Pub. L. 110–314, 122 Stat. 3016.

■ 8. Amend § 1118.2 by revising paragraph (a) to read as follows:

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter referred to as "notice"). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, firewalled third party conformity assessment body, or establishment in which products are manufactured, tested, or held, in connection with distribution in commerce, or any conveyance being used to transport products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, firewalled third party conformity assessment body, or establishment where products are manufactured, tested, held, or transported and that may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging, or labeling which:

(i) Are required by the Commission to be established, made or maintained, or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules, and orders promulgated under the Act, and

(4) To obtain:

(i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm;

(ii) Samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's, third party conformity assessment body's, or retailer's cost, unless voluntarily provided; and

(iii) Information, both oral and written, concerning any matter referred to in the Act and these rules.

* * * * *

Dated: February 25, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–04649 Filed 3–11–13; 8:45 am]

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