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Subpart G—Feedstock Flexibility Program

§ 1435.600 General statement.

(a) The provisions of this subpart will be applied when CCC determines that buying sugar is necessary to avoid forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) This subpart will be applicable to:

- (1) Any sugar seller who contracts with CCC to sell sugar, and
- (2) Any bioenergy producer who contracts with CCC to purchase sugar for the production of bioenergy.

§ 1435.601 Sugar surplus determination and public announcement.

(a) CCC will estimate by September 1 the quantity of sugar that will be made available for purchase and sale under FFP for the following crop year.

(b) Not later than January 1, April 1, and July 1 of the fiscal year, CCC will re-estimate the quantity of sugar that will be made available for purchase and sale under the FFP for the crop year.

(c) CCC will announce by press release the estimates in paragraphs (a) and (b) of this section, which will reflect CCC's forecast of sugar likely to be forfeited to CCC and any uncertainty surrounding that forecast.

§ 1435.602 Eligible sugar to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar for FFP that is eligible to be used as collateral under the CCC Sugar Loan Program, as specified in § 1435.102.

(b) Raw sugar, refined sugar, or in-process sugar purchased directly from any domestic sugar beet or sugarcane processor that made the raw sugar, refined sugar, or in-process sugar will be credited against the processor's sugar marketing allocation. (The definition for "marketing" in § 1435.2 applies to this subpart.)

(c) CCC will only purchase sugar located in the United States.

(d) CCC will evaluate an offer to sell sugar to CCC based upon CCC's estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing thick juice (an in-process sugar) would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the volume of the thick juice in evaluating the per unit sales price.

(e) CCC will only purchase the sugar if such purchase would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

§ 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

§ 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) [Reserved]

§ 1435.605 Competitive procedures.

(a) CCC will generally issue tenders for bids, before entering into contracts with any eligible sugar seller or buyer, with the intent of selecting the bid(s) that represents the least cost to CCC of removing sugar from the market.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of forfeitures of sugar to CCC.

§ 1435.606 Miscellaneous.

(a) As a sugar buyer, a bioenergy producer must take possession of the sugar no more than 30 days from the date of CCC's purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for the sugar purchased under this program. A bioenergy producer must assume any storage costs accrued from date of contract to date of taking possession of the sugar.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof as specified by CCC that the sugar has been used in the bioenergy factory for the production of bioenergy and permit access for USDA to verify compliance.

§ 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

Signed on July 24, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2013-18160 Filed 7-26-13; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM12-19-000; Order No. 782]

Revisions to Modeling, Data, and Analysis Reliability Standard

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves Modeling, Data, and Analysis (MOD) Reliability Standard MOD-028-2, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The Commission finds that the proposed Reliability Standard represents an improvement over the currently-effective standard, MOD-028-1 because the proposed Reliability Standard clarifies the timing and frequency of Total Transfer Capability calculations needed for Available Transfer Capability calculations. The Commission also approves NERC's proposed implementation plan and retirement of the currently-effective standard.

DATES: This rule is effective September 27, 2013.

FOR FURTHER INFORMATION CONTACT:

Rachel Bryant (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6155, rachel.bryant@ferc.gov.

Syed Ahmad (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8718, syed.ahmad@ferc.gov.

Christopher Young (Technical Information), Office of Energy of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6403, christopher.young@ferc.gov.

SUPPLEMENTARY INFORMATION:

144 FERC ¶ 61,027

United States Of America

Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Final Rule

Issued July 18, 2013.

1. Pursuant to section 215 of the Federal Power Act (FPA),¹ the Commission approves Modeling, Data, and Analysis (MOD) Reliability Standard MOD-028-2 submitted to the Commission by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). NERC submitted one modification to the currently-effective Reliability Standard MOD-028-1, pertaining to the information a transmission service provider² must include when calculating Total Transfer Capability (TTC) using the area interchange methodology for the on-peak and off-peak intra-day and next day time periods. The Commission also approves NERC's proposed implementation plan and retirement of the currently-effective Reliability Standard MOD-028-1.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.³ Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.⁴ Pursuant to section 215 of the FPA, the Commission established a process to

select and certify an ERO,⁵ and subsequently certified NERC.⁶

3. In March 2007, the Commission issued Order No. 693, evaluating 107 Reliability Standards, including 23 MOD standards pertaining to methodologies for calculating Available Transfer Capability (ATC) and Available Flowgate Capability (AFC).⁷ The Commission approved one out of the 23 MOD standards unconditionally, approved nine with direction for modification and left the remaining 13 pending with direction for modification.⁸

4. On November 24, 2009, the Commission issued Order No. 729,⁹ which approved Available Transmission System Capability Reliability Standard MOD-001-1 as part of a set of Reliability Standards that pertain to methodologies for the consistent and transparent calculation of ATC and AFC. These Reliability Standards were designed to ensure, among other things, that transmission service providers maintain awareness of available system capability and future flows on their own systems, as well as those of their neighbors, and to reduce transmission service provider discretion and enhance transparency in the calculation of ATC.¹⁰ Requirement R1 of MOD-001-1 required a transmission operator to select one of three methodologies for calculation of ATC or AFC for each available ATC path for each time frame

(hourly, daily or monthly). NERC developed these three methodologies as detailed in Reliability Standards MOD-028-1 (the area interchange methodology), MOD-029-1a (the rated system path methodology), and MOD-030-2 (the flowgate methodology).¹¹

5. The MOD Reliability Standards require certain users, owners, and operators of the bulk power system to develop consistent and transparent methodologies for the calculation of ATC or AFC.¹² Three currently-effective Reliability Standards—MOD-028-1, MOD-029-1a, and MOD-030-2—address three different methodologies for calculating ATC or AFC.¹³ MOD-028-1, which describes the area interchange methodology for determining ATC, only applies to those transmission operators and transmission service providers that elect to implement this particular methodology as part of their reliability compliance with Reliability Standard MOD-001-1. MOD-001-1 requires transmission service providers to “[a]dhere] to a specific documented and transparent methodology” and “to select one of three methodologies for calculating [ATC] or [AFC] for each available transfer capability path for each time frame (hourly, daily or monthly) for the facilities in its area.”¹⁴

6. Requirement R3.1 of MOD-028-1 details the information a transmission operator must include in its TTC determination under the area interchange methodology for the on-peak and off-peak intra-day and next day time periods, as well as future days two through 31 and for months two through 13.¹⁵

B. NERC Petition

7. On August 24, 2012, NERC submitted a Petition for Approval of Proposed Reliability Standard (Petition), seeking Commission approval of a proposed Reliability Standard, MOD-028-2, Area Interchange Methodology, Requirement R3.1, which would revise the currently effective “Version 1” standard—MOD-028-1.

8. NERC stated that Florida Power & Light Company (FPL) requested that NERC interpret MOD-028-1, Requirement R3.1. Specifically, FPL requested that NERC clarify whether Requirement R3.1, which instructs transmission operators to include data

¹ 16 U.S.C. 824o (2006).

² NERC defines “transmission service provider” as “[t]he entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.” NERC, *Glossary of Terms Used in NERC Reliability Standards* 64 (2011), http://www.nerc.com/files/Glossary_of_Terms.pdf. We also use the term “transmission operator” in this final rule, which is defined by NERC as “[t]he entity responsible for the reliability of its “local” transmission system, and that operates or directs the operations of the transmission facilities.” *Id.* These terms indicate distinct NERC functional entities, to which different requirements within the same Reliability Standard may apply. Accordingly, in the context of describing the requirement of a Reliability Standard, we necessarily use either or both terms where appropriate.

³ *Id.* 824o(d)(2).

⁴ *Id.* 824o(e)(3).

⁵ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁶ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁷ *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1046, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007). *See also Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) (directing public utilities to develop Reliability Standards and business practices to improve the consistency and transparency of ATC calculations).

⁸ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1010.

⁹ *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System*, Order No. 729, 129 FERC ¶ 61,155 (2009), *order on clarification*, Order No. 729-A, 131 FERC ¶ 61,109, *order on reh'g and reconsideration*, Order No. 729-B, 132 FERC ¶ 61,027 (2010).

¹⁰ Order No. 729, 129 FERC ¶ 61,155 at PP 87–89.

¹¹ *Id.* P 51.

¹² *Id.* P 1.

¹³ *Id.* P 51.

¹⁴ *Id.* P 19.

¹⁵ *Id.* P 57 (stating that this information includes: expected generation and transmission outages, additions, and retirements; load forecasts; and unit commitment and dispatch order).

“[f]or on peak and off peak intra-day and next day TTCs,” actually requires transmission operators to provide separate TTC numbers for different portions of the current day. NERC explained that, upon reviewing FPL’s request for interpretation, the NERC Standards Committee determined that providing this clarification might require a modification to the Standard.¹⁶ In its Petition, NERC

asserted that it intended the language of MOD-028-1 to specify that, for TTC used in current-day and next-day ATC calculations, the load forecast used should be consistent with the period being calculated. Specifically, NERC stated:

Requirement R3 of the MOD-028-1 standard is proposed to be modified to clarify language regarding load forecasting, to indicate that for days two through 31, a daily load forecast is required (identical to the

current standard); for months two through 13, a monthly load forecast is required (identical to the current standard); and for current-day and next-day, entities may use *either* a daily or hourly load forecast (the language being clarified). The new language clarifies and is consistent with the intent of the original requirement language, and does not materially change the standard.¹⁷

9. NERC thus proposed Reliability Standard MOD-028-2, which revises MOD-028-1 as follows:

R3. When calculating TTCs for ATC Paths, the Transmission Operator shall include the following data for the Transmission Service Provider’s area ...

R3.1. ~~For on peak and off peak intra-day and next day~~ For TTCs, use the following (as well as any other values and additional parameters as specified in the ATCID.

R3.1.1. Expected generation and Transmission outages, additions, and retirements, included as specified in the ATCID.

R3.1.2. LoadA daily or hourly load forecast for the applicable period being calculatedTTCs used in current-day and next-day ATC calculations.

R3.1.3. A daily load forecast for TTCs used in ATC calculations for days two through 31.

~~R3.1.2.~~R3.1.4. A monthly load forecast for TTCs used in ATC calculations for months two through 13 months TTCs.

C. Notice of Proposed Rulemaking

10. On March 21, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard MOD-028-2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹⁸ The Commission proposed to approve Reliability Standard MOD-028-2 after determining that it clarified requirement R3.1 of Reliability Standard MOD-028-1 and did not present reliability concerns.

11. While proposing to approve Reliability Standard MOD-028-2, the

NOPR also identified possible market implications of NERC’s proposed modification to requirement R3.1. The NOPR stated that, although NERC’s statutory functions are properly focused on the reliability of the Bulk-Power System, the Commission has determined that the ERO should also attempt to develop Reliability Standards that have no undue negative effect on competition.¹⁹

12. The NOPR stated that NERC’s proposed revision to requirement R3.1.2 allows a transmission operator flexibility to choose either a daily or hourly load forecast when forecasting

current-day and next-day TTC. The NOPR sought comments regarding whether a transmission operator could potentially use a load forecast assumption that is not applicable to the period being calculated. As an example, the NOPR stated that a transmission operator using daily on-peak load forecasts in determining off-peak TTC for the current day could, either purposefully or inadvertently, suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service.

13. Comments in support of the NOPR were filed by NERC and Southern

¹⁶ Petition, Exhibit E (Record of Development of Proposed Reliability Standard).

¹⁷ Petition at 7 (emphasis added).

¹⁸ *Revisions to Modeling, Data, and Analysis Reliability Standard*, Notice of Proposed Rulemaking, 78 FR 19,152 (Mar. 29, 2013), 142 FERC ¶ 61,210 (2013).

¹⁹ *Id.* P 11 (citing Order No. 729, 129 FERC ¶ 61,155 at PP 109, 135).

Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (Southern Company Services).

II. Discussion

14. Pursuant to section 215(d)(2) of the FPA, we approve Reliability Standard MOD-028-2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also approves NERC's proposed implementation plan, i.e., that the standard shall become effective on the first day of the first calendar quarter after Commission approval, and retirement of the currently-effective Reliability Standard MOD-028-1. NERC's clarifying revision to Requirement R3.1.2 of MOD-028-2 allows a transmission operator the flexibility to choose either a daily or hourly load forecast when forecasting current-day and next-day TTC. This revision does not present reliability concerns.

15. In the NOPR, the Commission asked for comment on a potential market-related concern regarding whether a transmission operator using daily on-peak load forecasts in determining off-peak TTC for the current day could, either purposefully or inadvertently, suppress off-peak ATC used by generators that make off-peak sales, or other customers who purchase hourly service. In response to the NOPR, two entities submitted comments, both supporting Commission approval of MOD-028-2. Southern Company Services comments that the flexibility in Requirement R3.1 does not give rise to the potential for undue discrimination in ATC calculations. NERC states that the proposed modification to Reliability Standard MOD-028-2 clarifies the existing language and provides flexibility for operators to select a methodology that best fits their needs. NERC comments that it "expect[s] that entities will implement proposed Reliability Standard MOD-028-2 consistent with their existing legal obligations, i.e., pursuant to open access transmission tariffs, etc." ²⁰ NERC adds that, "while it might be possible for an entity to use a load forecast assumption that is not applicable to the period being calculated, the Commission can mitigate such risks through complaints and the Commission's market oversight authority." ²¹

16. We are satisfied that the modification to Requirement R3.1 does not give rise to any immediate market-

related concerns in the instant proceeding. No entity filed comments raising the concern that a transmission operator would use a load forecast assumption that is not applicable to the period being calculated. However, we agree with NERC that, consistent with Order No. 729, the risk of a transmission service provider using parameters and assumptions to skew its ATC values can be mitigated through complaints and market oversight authority. ²² In addition, as NERC also acknowledges, transmission operators must implement the revised Reliability Standard MOD-028-2 in a manner consistent with their existing legal obligations, including their obligations under their open access transmission tariffs. ²³

17. Accordingly, pursuant to FPA section 215(d)(2), we approve Reliability Standard MOD-028-2.

III. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency. ²⁴ The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995. ²⁵

19. As stated above, the Commission previously approved, in Order No. 729, the Reliability Standard that is the subject of the current rulemaking. This Final Rule approves one revision to a previously approved Reliability Standard developed by NERC as the ERO. The minor revision relates to an existing Reliability Standard and does not add to or otherwise increase entities' current reporting burden. Thus, the revision does not materially affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 729. The MOD-028-1 Reliability Standard that is subject of the approved revision was approved in Order No. 729, and the related information collection requirements were reviewed and approved, accordingly. ²⁶ The Commission submitted the revised Reliability Standard to OMB as a request for "no material" or "nonsubstantive" change ²⁷ at the NOPR stage. OMB

²² See Order No. 729, 129 FERC ¶ 61,155 at P 135.

²³ To the extent a market-related issue arises as a result of future changes to Reliability Standard MOD-028, we can address it at that time.

²⁴ 5 CFR 1320.11 (2012).

²⁵ 44 U.S.C. 3507(d).

²⁶ See Order No. 729, 129 FERC ¶ 61,155 at PP 307-312.

²⁷ This type of submittal means that there is no change to the existing burden estimates and the existing expiration date.

approved the nonsubstantive change, requiring no further Commission action related to the information collection requirements.

IV. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. ²⁸ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. ²⁹ The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

21. The Regulatory Flexibility Act of 1980 (RFA) ³⁰ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a final rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. ³¹ For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The Commission does not expect the revision adopted herein to materially affect the cost for small entities to comply with the proposed Reliability Standard. As discussed above, the clarifying revision allows transmission service providers more flexibility in calculating ATC and only *de minimis* costs are associated with implementation of the revision. Therefore, the Commission certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

²⁸ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

²⁹ 18 CFR 380.4(a)(2)(ii).

³⁰ 5 U.S.C. 601-612.

³¹ See 13 CFR 121.201.

²⁰ NERC Comments at 3-4.

²¹ *Id.* at 3.

VI. Document Availability

22. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

23. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

25. These regulations are effective September 27, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-17813 Filed 7-26-13; 8:45 am]

BILLING CODE 6717-01-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2013-0016]

RIN 0960-AH58

Extension of Effective Date for Temporary Pilot Program Setting the Time and Place for a Hearing Before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending our pilot program that authorizes the agency to

set the time and place for a hearing before an administrative law judge (ALJ). This final rule will extend the pilot program for 1 year. The extension of the pilot program continues our commitment to improve the efficiency of our hearing process and maintain a hearing process that results in accurate, high-quality decisions for claimants. The current pilot program will expire on August 9, 2013. In this final rule, we are extending the effective date to August 9, 2014. We are making no other substantive changes.

DATES: This final rule is effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Rainbow Forbes, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041-3260, 703-605-8100 for information about this final rule. For information on eligibility for filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, one of our highest priorities has been to improve the efficiency of our hearing process for the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. We intended the pilot program we adopted in July 2010 (75 FR 39154), under which the agency, rather than the ALJ, may set the time and place of the hearing under certain circumstances, to be part of our efforts to improve the efficiency of the hearing process. Since that time, we continue to face significant challenges in dealing with the historically large number of hearing requests. Over the next several years, we anticipate that requests for hearings before ALJs will continue to remain high. Therefore, we must maintain programs and policies that can provide us with the flexibility we need to improve the efficiency of our hearing process.

On November 10, 2008, we published a notice of proposed rulemaking to amend our rules to allow the agency to set the time and place for a hearing before an ALJ. (73 FR 66564). At that time, we explained that we would continue to monitor ALJ productivity closely, and if hearings were not being scheduled in a prompt and professional manner, we would use all existing authorities to correct the situation.

Although we expected limit use of the rule, we planned to monitor the success

of the regulation to ensure that it did not produce unintended consequences.

Following receipt of public comments, we issued a final rule on July 8, 2010. (75 FR 39154). Under the rule, the agency acquired the authority to set the time and place for a hearing before an ALJ. In the rule, we explained that we would implement our authority to set the time and place for a hearing before an ALJ as a temporary pilot program. Therefore, we included in sections 404.936(h) and 416.1436(h) of the final rule a provision that the pilot program would end on August 9, 2013, unless we decided to either terminate the program earlier, or extend it beyond that date by publication of a final rule in the **Federal Register**.

Explanation of Extension

In establishing the final rule establishing the pilot program in 2010, we hoped to determine whether providing us with the authority to set the time and place of the hearing would allow us to better manage the number of hearings held and keep our hearing process as efficient as possible. During the 3 year pilot program, we tracked ALJ productivity closely. In situations where hearings were not being promptly scheduled, we worked with ALJs to correct these situations. To date, our efforts to work with our ALJs to correct situations in which we may have otherwise had to exercise the authority provided for in these rules has been successful. As a result, we have not been required to exercise our authority to schedule hearings. Nevertheless, we believe that we should continue the authority for the pilot program in order to provide us with the flexibility we need to manage the hearing process appropriately. We consider the pilot program a potentially important component in our overall effort to reduce hearing backlogs.

By extending the pilot program an additional year, we will continue to monitor the productivity of ALJs and to work with our ALJs to address any concerns regarding our hearing process. Accordingly, we are extending our authority to set the time and place for a hearing before an ALJ for another year, until August 9, 2014. As before, we are reserving the authority to end the program earlier, or to extend it by publishing a final rule in the **Federal Register**.

Regulatory Procedures

Justification for Issuing Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking