FEDERAL REGISTER

Vol. 76 Tuesday,

No. 80 April 26, 2011

Pages 23169–23448

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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, May 10, 2011
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

Contents

Federal Register

Vol. 76, No. 80

Tuesday, April 26, 2011

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
Proposed Rules:
26 23208

14 CFR
39 23169
Proposed Rules:
39 22318

17 CFR
Proposed Rules:
Ch. I 23221
Ch. II 23221

18 CFR
40 23171
Proposed Rules:
40 23222

19 CFR
Proposed Rules:
351 23225

22 CFR
62 23177

33 CFR
100 23185
117 (3 documents) 23815, 23187, 23188
165 23189
167 (2 documents) 23191, 23193
Proposed Rules:
165 23227

40 CFR
52 23196

41 CFR
Proposed Rules:
60-250 23358
60-300 23358

43 CFR
2090 23198
2800 23198
Proposed Rules:
2090 23230
2800 23230

48 CFR
Proposed Rules:
2 23236
3 23236
4 23236
7 23236
9 23236
11 23236
12 23236
13 23236
14 23236
15 23236
16 23236
18 23236
37 23236
42 23236
52 23236
53 23236

49 CFR
Proposed Rules:
571 (2 documents) 23254, 23255

50 CFR
622 23205
648 23206
Proposed Rules:
10 23428
17 (2 documents) 23256, 23265
21 23428

Rules and Regulations

Federal Register
Vol. 76, No. 80
Tuesday, April 26, 2011

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0409; Directorate Identifier 2011–CE–011–AD; Amendment 39–16678; AD 2011–09–16]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Glaser-Dirks Model DG–808C Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been reported by DG–808 C owners that the bolt at the landing gear control bellcrank was found mounted in the wrong direction. Further investigations have shown that in such situation, the bolt could interfere and damage:

—The air brake control pushrod, and
—The wing flap control pushrod if the landing gear is operated with negative flap settings.

This condition, if not detected and corrected, may lead to reduce the controllability of the powered sailplane.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 2, 2011.

On May 2, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by June 10, 2011.

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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact DG-Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, D 76 646 Bruchsal, Germany; *telephone:* +49 7251 3020 140; *fax:* +49 7251 3020 149; *Internet: http://www.dg-flugzeugbau.de/index-e.html;* e-mail: dg@dg-flugzeugbau.de. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0053–E, dated March 24, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

It has been reported by DG–808 C owners that the bolt at the landing gear control bellcrank was found mounted in the wrong direction. Further investigations have shown that in such situation, the bolt could interfere and damage:

—The air brake control pushrod, and
—The wing flap control pushrod if the landing gear is operated with negative flap settings.

This condition, if not detected and corrected, may lead to reduce the controllability of the powered sailplane.

For the reasons described above, this AD requires to inspect the landing gear control bellcrank bolt for proper installation and the accomplishment of the associated corrective actions, as applicable.

EASA issued AD No.: 2011–0053–E based on their determination that this was a production error and a quality control problem. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

DG Flugzeugbau GmbH has issued Technical note No. 800/40, dated February 14, 2011; and Section A–A of Undercarriage control circuit Diagram 15, dated November 2004, of DG Flugzeugbau GmbH Maintenance Manual for the Motorglider DG–808C, dated June 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because it has been reported that bolts at the landing gear control bellcrank were mounted in the wrong direction. The incorrectly mounted bolt could interfere and damage the air brake control pushrod and the wing flap control pushrod if the landing gear is operated with negative flap settings. This condition, if not detected and corrected, may lead to reducing the controllability of the powered sailplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0409; Directorate Identifier 2011–CE–011–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD will affect 5 products of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $213, or $43 per product.

In addition, we estimate that any necessary follow-on actions would take about 0.5 work-hour and require parts costing $250, for a cost of $293 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 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); and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–16 DG Flugzeugbau GmbH: Amendment 39–16678; Docket No. FAA–2011–0409; Directorate Identifier 2011–CE–011–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 2, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to DG Flugzeugbau GmbH Glaser-Dirks Models DG–808C gliders, serial numbers 8–316 B 216 X 1 through 8–417 B 316 X 76, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been reported by DG–808 C owners that the bolt at the landing gear control bellcrank was found mounted in the wrong direction. Further investigations have shown that in such situation, the bolt could interfere and damage:

—The air brake control pushrod, and

—The wing flap control pushrod if the landing gear is operated with negative flap settings.

This condition, if not detected and corrected, may lead to reduce the controllability of the powered sailplane.

For the reasons described above, this AD requires to inspect the landing gear control bellcrank bolt for proper installation and the accomplishment of the associated corrective actions, as applicable.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before further flight after May 2, 2011 (the effective date of this AD), inspect the landing gear control bellcrank bolt M6x26 LN9037 for proper installation following DG–Flugzeugbau GmbH Technical note No. 800/40, dated February 14, 2011.

(2) If, during the inspection required by paragraph (f)(1) of this AD, the bolt is found mounted in the wrong direction, before further flight, do the following actions:

(i) Install the landing gear control bellcrank bolt M6x26 LN9037 and its washers and nut correctly following DG–Flugzeugbau GmbH Technical note No. 800/40, dated February 14, 2011; and Section A–A of Undercarriage control circuit Diagram 15, dated November 2004, of DG Flugzeugbau GmbH Maintenance Manual for the Motorglider DG–808C, dated June 2005.

(ii) Inspect the air brake control pushrod (part number (P/N) 6St13) and the wing flap control pushrod (P/N 8St7) for damage. If any pushrod is damaged, before further flight, replace it with a serviceable part following DG–Flugzeugbau GmbH Technical note No. 800/40, dated February 14, 2011.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0053–E, dated March 24, 2011, DG–Flugzeugbau GmbH Technical note No. 800/40, dated February 14, 2011; and Section A–A of Undercarriage control circuit Diagram 15, dated November 2004, of DG Flugzeugbau GmbH Maintenance Manual for the Motorglider DG–808C, dated June 2005, for related information.

Material Incorporated by Reference

(i) You must use DG–Flugzeugbau GmbH Technical note No. 800/40, dated February 14, 2011; and Section A–A of Undercarriage control circuit Diagram 15, dated November 2004, of DG Flugzeugbau GmbH Maintenance Manual for the Motorglider DG–808C, dated June 2005, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact DG-Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, D 76 646 Bruchsal, Germany; *telephone:* +49 7251 3020 140; *fax:* +49 7251 3020 149; *Internet: http://www.dg-flugzeugbau.de/index-e.html; e-mail: dg@dg-flugzeugbau.de.*

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

(4) You may also review copies of the service information incorporated by reference for this AD 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.*

Issued in Kansas City, Missouri, on April 19, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10006 Filed 4–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–8–000; Order No. 750]

Electric Reliability Organization Interpretations of Interconnection Reliability Operations and Coordination and Transmission Operations Reliability Standards

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission hereby approves the North American Electric Reliability Corporation's (NERC) interpretation of the Commission-approved Reliability Standards, IRO–005–1, Reliability Coordination—Current-Day Operations, Requirement R12, and TOP–005–1, Operational Reliability Information, Requirement R3. Specifically, the interpretation finds that a transmission owner must report a Special Protection System that is operating with only one communication channel in service to the reliability coordinator and neighboring systems upon request, or when the loss of the communication channel will result in the failure of the Special Protection System to operate as designed.

DATES: *Effective Date:* This rule will become effective May 26, 2011.

FOR FURTHER INFORMATION CONTACT: Danny Johnson (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *Telephone:* (202) 502–8892. *danny.johnson@ferc.gov.*

Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *Telephone:* (202) 502–8744.

SUPPLEMENTARY INFORMATION:

135 FERC ¶ 61,041

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

Issued April 21, 2011

1. Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission hereby approves the North American Electric Reliability Corporation's (NERC) interpretation of the Commission-

approved Reliability Standards, IRO–005–1, Reliability Coordination—Current-Day Operations, and TOP–005–1, Operational Reliability Information. Specifically, the interpretation finds that a transmission owner must report a Special Protection System that is operating with only one communication channel in service to the reliability coordinator and neighboring systems upon request, or when the loss of the communication channel will result in the failure of the Special Protection System to operate as designed. In the Final Rule, the Commission declines to adopt the proposal from the Notice of Proposed Rulemaking (NOPR) to direct the Electric Reliability Organization (ERO) to develop modifications to the Reliability Standards to require additional reporting and instead approves the interpretation as submitted.[1]

I. Background

A. FPA Section 215 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[3] and subsequently certified NERC as the ERO.[4] On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a Final Rule, Order No. 693, approving 83 of these 107 Reliability Standards and directing other action related to these Reliability Standards.[5] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.[6]

4. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[7] The ERO's standards process manager will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard, forwarded to the NERC Board of Trustees (Board) for adoption and filed with the applicable regulatory authority for regulatory approval.

B. IRO–005–1 and TOP–005–1 Reliability Standards

5. In this proceeding, the Commission addresses NERC's interpretation of the IRO–005–1 and TOP–005–1 Reliability Standards, as previously discussed in the NOPR. In Order No. 693, the Commission approved prior versions of the IRO–005–1 and TOP–005–1, with modifications.[8] The Commission directed NERC to modify TOP–005–1 to specify the operational status of Special Protection Systems and power system stabilizers as information that transmission operators are expected to share, unless otherwise agreed.[9] Because these and other intervening changes are not material to the substance of the interpretation, the discussion in this Final Rule is intended to apply equally to the subsequent versions of these standards as appropriate.

1. Reliability Standard IRO–005–1

6. Reliability Standard IRO–005–1 applies to transmission operators, balancing authorities, reliability coordinators and purchasing selling entities. The IRO–005–1 Purpose statement provides: "The Reliability Coordinator must be continuously aware of conditions within its Reliability Coordinator Area and include this information in its reliability assessments. The Reliability Coordinator must monitor Bulk Electric System parameters that may have significant impacts upon the Reliability Coordinator Area and neighboring Reliability Coordinator Areas." Requirement R12 of IRO–005–1 states in relevant part:

> Whenever a Special Protection System that may have an inter-Balancing Authority, or inter-Transmission Operator impact (*e.g.,* could potentially affect transmission flows resulting in a SOL or IROL violation) is armed, the Reliability Coordinator shall be aware of the impact of the operation of that Special Protection System on inter-area flows. The Transmission Operator shall immediately inform the Reliability Coordinator of the status of the Special Protection System including any degradation or potential failure to operate as expected.

2. Reliability Standard TOP–005–1

7. Reliability Standard TOP–005–1 applies to transmission operators, balancing authorities, reliability coordinators and purchasing selling entities, and has the stated purpose of ensuring that reliability entities have the operating data needed to monitor system conditions within their areas.[10]

8. Requirement R3 of TOP–005–1 states in relevant part:

> Upon request, each Balancing Authority and Transmission Operator shall provide to other Balancing Authorities and Transmission Operators with immediate responsibility for operational reliability, the operating data that are necessary to allow these Balancing Authorities and Transmission Operators to perform operational reliability assessments and to coordinate reliable operations. Balancing Authorities and Transmission Operators shall provide the types of data as listed in Attachment 1–TOP–005–0 "Electric System Reliability Data," unless otherwise agreed to by the Balancing Authorities and Transmission Operators with immediate responsibility for operational reliability.

TOP–005–1, Attachment 1 includes "New or degraded special protection systems" in the types of data to be reported.

---

[1] *Electric Reliability Organization Interpretations of Interconnection Reliability Operations and Coordination and Transmission Operations Reliability Standards,* Notice of Proposed Rulemaking, 75 FR 80391 (Dec. 22, 2010), 133 FERC ¶ 61,234, at P 27 (2010) (NOPR).

[2] *See* 16 U.S.C. 824o(e)(3).

[3] *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).

[4] *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 (DC Cir. 2009).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] 16 U.S.C. 824o(d)(5). Section 215(d)(5) provides, "The Commission * * * may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section."

[7] NERC's interpretation process is detailed in its Rules of Procedure, Appendix 3A, Standards Process Manual, at 27–29 (effective Sept. 3, 2010).

[8] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 945, 1648.

[9] *Id.* P 1648 (directing revisions to TOP–005–1, Attachment 1). The Commission addressed the most recent versions of the IRO–005–1 and TOP–005–1 Reliability Standards in *Mandatory Reliability Standards for Interconnection Reliability Operating Limits,* Order No. 748, 76 FR, 16240 (Mar. 23, 2011), 134 FERC ¶ 61,213 (2011) (revising responsibilities for interconnection reliability operating limit and system operating limit monitoring), Notice of Proposed Rulemaking, 75 FR 71613 (Nov. 24, 2010), FERC Stats. & Regs. ¶ 32,665, at P 65 (2010).

[10] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1642.

C. Special Protection Systems

9. Also in Order No. 693, the Commission reviewed standards addressing Special Protection System design, operation, and coordination.[11] The Commission declined to approve them because they were "fill in the blank" standards that required regional reliability organizations to develop criteria for each region. Subsequently, NERC has produced a white paper providing background for its Protection System Reliability Standards development effort.[12] After this standards development effort was initiated, the NERC Regional Reliability Standards Working Group identified the Special Protection System standard as one that required regional standard development.[13] The Commission understands that the regional standard development efforts are currently ongoing.

10. The NERC glossary provides definitions of terms used in the Reliability Standards and defines a "Special Protection System" as:

> An automatic protection scheme designed to detect abnormal or predetermined system conditions and take corrective actions other than and/or in addition to the isolation of faulted component to maintain system reliability. Such action may include changes in demand, generation (MW and MVAR), or system configuration to maintain system stability, acceptable voltage or power flows.[14]

11. Special Protection Systems generally are used to address system reliability vulnerabilities in lieu of installing additional Bulk-Power System facilities. For instance, a Special Protection System may be used to control generator output to limit line loading after a contingency, or a Special Protection System may rely on pre-determined operational protocols to reconfigure the system in response to identified system conditions to prevent system instability or cascading outages, and protect other facilities in response to transmission outages.

D. NERC's Interpretation Filing

12. NERC filed its interpretation on November 24, 2009. The interpretation responds to a request from Manitoba Hydro asking NERC to interpret whether a Special Protection System that is operating with only one communication channel in service would be considered "degraded," and thus subject to the reporting requirements found in these standards.[15] NERC's interpretation finds that a transmission owner must report a Special Protection System that is operating with only one communication channel in service to the reliability coordinator and neighboring systems upon request, or when the loss of the communication channel will result in the failure of the Special Protection System to operate as designed.

1. NERC Interpretation Process

13. Manitoba Hydro asked whether a Special Protection System that is operating with only one communication channel in service would be considered "degraded" for the purposes of these standards. Manitoba Hydro stated:

> Unlike other facilities, Special Protection Systems are required by NERC standards to be designed with redundant communication channels, so that if one communication channel fails the [Special Protection System] is able to remain in operation. Requirement R1.3 of NERC Standard PRC–012–0 requires a Regional Reliability Organization with Transmission Owners that use [Special Protection Systems] to have a documented review procedure to ensure that [Special Protection Systems] comply with reliability standards and criteria, including: "requirements to demonstrate that the [Special Protection System] shall be designed so that a single [Special Protection System] component failure, when the [Special Protection System] was intended to operate, does not prevent the interconnected transmission system from meeting the performance requirements in TPL–001–0, TPL–002–0 and TPL–003–0." Accordingly, [Special Protection Systems] are designed to continue to perform their function with only one communication channel in service.

14. Accordingly, Manitoba Hydro asserted that a Special Protection System should not be considered "degraded" if it is operating with one communication channel out of service.

15. Consistent with the NERC Rules of Procedure, NERC assembled a team to respond to the request for interpretations of these two Reliability Standard requirements and presented the proposed interpretations to industry ballot, using a process similar to the process it uses for the development of Reliability Standards.[16] According to NERC, the interpretations were developed and approved by industry stakeholders using the NERC Reliability Standards Development Procedure and approved by the NERC Board.

16. In response to Manitoba Hydro's interpretation request, NERC provided the following:

> TOP–005–1 does not provide, nor does it require, a definition for the term "degraded."
>
> The IRO–005–1 ([Requirement] R12) standard implies that degraded is a condition that will result in a failure of an [Special Protection System] to operate as designed. If the loss of a communication channel will result in the failure of an [Special Protection System] to operate as designed, then the Transmission Operator would be mandated to report that information. On the other hand, if the loss of a communication channel will not result in the failure of the [Special Protection System] to operate as designed, then such a condition can be, but is not mandated to be, reported.

17. In the background section of the interpretation, NERC affirms that transmission operators are required to provide information such as that listed in the TOP–005–1, Attachment 1 examples upon request, "whether or not [a facility] is or is not in some undefined 'degraded' state."[17]

18. In addition, the background section of the NERC interpretation emphasizes that the information to be provided under IRO–005–1 relates to events that may have a significant impact on the system, especially where operating limits are or may be exceeded. Specifically, this background section states:

> IRO–005–1 mandates that each Reliability Coordinator monitor predefined base conditions (Requirement R1), collect additional data when operating limits are or may be exceeded (Requirement R3), and identify actual or potential threats (Requirement R5). The basis for that request is left to each Reliability Coordinator. The Purpose statement of IRO–005–1 focuses on the Reliability Coordinator's obligation to be aware of conditions that may have a "significant" impact upon its area and to communicate that information to others (Requirements R7 and R9). Please note: it is from this communication that Transmission Operators and Balancing Authorities would either obtain or would know to ask for [Special Protection System] information from another Transmission Operator.[18]

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1520, 1528, *et seq.* (declining to approve or remand certain Special Protection Systems-related Reliability Standards, including PRC–012–0, Special Protection System Review Procedure; PRC–013–0, Special Protection System Database; PRC–014–0, Special Protection System Assessment). The Commission used the term fill-in-the-blank standards to refer to proposed standards that required the regional reliability organizations to develop at a later date criteria for use by users, owners or operators within each region.

[12] NERC System Protection and Control Subcommittee (SPCS), November 18, 2008 white paper on *Protection System Reliability, Redundancy of Protection System Elements available at http://www.nerc.com/filez/spctf.html* (posted Jan. 14, 2009).

[13] NERC Regional Reliability Standards Working Group, notes on October 29, 2009 meeting, *available at http://www.nerc.com/filez/rrswg.html.*

[14] In the Western Interconnection, a Special Protection System is called a "Remedial Action Scheme."

[15] The NERC Petition provides a copy of Manitoba Hydro's November 28, 2008 request for interpretation as Exhibit A.

[16] NERC Standards Process Manual at 27–29.

[17] NERC Petition, Exhibit B at 5 (proposing text of interpretation as Appendix 1 to IRO–005–1 and TOP–005–1, and including "Background Information for Interpretation" section).

[18] *Id.,* Exhibit B at 6.

19. In addition, the NERC Petition states:

> The NERC Board of Trustees, in approving these interpretations, did so using a standard of strict construction that does not expand the reach of the standard or correct a perceived gap or deficiency in the standard. However, the NERC Board of Trustees recommended that any gaps or deficiencies in a Reliability Standard that are evident through the interpretation process be addressed promptly by the standard drafting team.[19]

20. NERC reports that it will examine any gaps or deficiencies in Reliability Standards TOP–005–1 and IRO–005–2 when it develops the next version of these standards through the Reliability Standards development process. According to NERC, the interpretations do not modify the language contained in the requirements under review. NERC states that the interpretations do not represent new or modified Reliability Standard requirements and will provide instruction and guidance of the intent and application of the requirements. NERC requests that the Commission approve the interpretations and make them effective immediately after approval, consistent with the Commission's procedures.

21. NERC submitted its Petition for Approval of Interpretations to Reliability Standard TOP–005–1—Operational Reliability Information and Reliability Standard IRO–005–1—Reliability Coordination—Current Day Operations (Petition) on November 24, 2009, seeking Commission approval of the interpretations referenced in the title of its pleading.

E. Notice of Proposed Rulemaking

1. Proposed Determination

22. In the NOPR, the Commission proposed to approve the interpretation as just and reasonable and not inconsistent with the language of the Reliability Standards. However, to address a concern that a Special Protection System that has lost a communication channel could compromise system reliability, the Commission proposed to direct that the ERO develop modifications to the Reliability Standards to address a potential reliability gap and ensure that a component failure, wherein a Special Protection System may not be able to perform as designed to ensure required Bulk-Power System performance, is reported to the appropriate reliability entities. To assist its consideration of the issues in this proceeding, the Commission requested comment on its proposal, and requested that reliability coordinators and transmission operators report whether it would be useful to the operation and coordination of the transmission system to receive information concerning the loss of a redundant communication channel.

23. In the NOPR, the Commission acknowledged the NERC System Protection and Control Subcommittee's (SPCS) November 18, 2008 white paper, "Protection System Reliability, Redundancy of Protection System Elements," which explained that "[r]edundancy means that two or more functionally equivalent Protection Systems are used to protect each electric system element."[20] The SPCS also explained that "[a] fundamental concept of redundancy is that Protection Systems need to be designed such that electric system faults will be cleared, even if a component of the Protection System fails."[21] In other words, redundant communication channels are a means to provide for the reliable operation of the Special Protection System. Thus, the Commission found that, should a communication channel fail at the time the Special Protection System is required to operate, the designed redundancy of the Special Protection System ensures that the Bulk-Power System can meet its reliability performance requirements.

24. However, the NOPR expressed the Commission's concern that, given NERC's proposed interpretation, a loss of a communication channel, a necessary and inherent performance requirement of a Special Protection System, may not be considered a reportable event under the current reporting requirements. The NOPR highlighted the critical status of Special Protection Systems, noting that they are by their nature used to address system reliability vulnerabilities to prevent system instability, cascading outages, and protect other facilities in response to contingencies. Therefore, a failure of the remaining communication component of a Special Protection System creates a reliability risk to the Bulk-Power System. We continued that where one communication channel has failed, the Special Protection System may not be able to meet the performance criteria of the Reliability Standards and in particular the performance criteria specified in the Transmission Planning (TPL) standards, because the Special Protection System may not withstand a second component failure. In conclusion, the Commission expressed its view that such a Special Protection System would be operating at some state less than the normal secure state and should need to be reported to the appropriate reliability entities in order for these reliability entities to accurately assess operational reliability.

2. Comments

25. NERC, Manitoba Hydro, Bonneville Power Administration (Bonneville), Edison Electric Institute (EEI), Entergy Services, Inc. (Entergy) and the ISO/RTO Council submitted comments in response to the NOPR. Electric Reliability Council of Texas, Inc. (ERCOT) submitted comments prior to the NOPR.

26. Commenters support the Commission's proposal to approve NERC's interpretation. However, with respect to the Commission's proposal to direct NERC to develop additional reporting requirements,[22] NERC and others responded to the Commission's proposal and emphasize that the information to be reported under the NOPR proposal is already available pursuant to other requirements. For instance, ISO/RTO Council states that the information is available to a reliability coordinator under IRO–002–1, Requirement R2.[23] NERC asserts that knowledge of the loss of a communication channel could be of general interest to a reliability coordinator or transmission operator and reports that its drafting teams are currently reviewing whether such entities should have the authority to request any and all information deemed necessary to protect the reliability of the bulk electric system, including the status of Special Protection System communication channels.[24]

27. Entergy cites IRO–005–2, Requirement R1.1 which states that a reliability coordinator must monitor the status of bulk electric system elements, including critical auxiliaries such as Special Protection Systems. According to Entergy, IRO–005–2, Requirement

[19] NERC Petition at 5.

[20] NERC SPCS White Paper at 9, *available* at *http://www.nerc.com/filez/spctf.html* (dated Jan. 14, 2009).

[21] *Id.; see also* Table 4–3 in the white paper noting possible responses to communication channel failure including adding a redundant channel or performing testing to ensure that delayed fault clearing does not violate the planning standards.

[22] NOPR, 133 FERC ¶ 61,234 at P 23, 27 (expressing concern that a Special Protection System that has lost a communication channel could compromise system reliability, but would not be reported to the appropriate reliability entities).

[23] ISO/RTO Council at 3 (citing similar requirement in new, proposed Reliability Standard, IRO–010–1a, Requirement R3). See also NERC at 4–5; NOPR, 133 FERC ¶ 61,234 at P 18 (noting interpretation assertion that reporting under TOP–005–1 is not dependent on whether a Special Protection System is in a degraded state); Order No. 748, 134 FERC ¶ 61,213.

[24] NERC at 4.

R1.1, demonstrates that information on the loss of Special Protection System communication channels is already available to reliability coordinators. Entergy likewise cites IRO–005–2, Requirement R1.1, which provides that each reliability coordinator shall monitor its reliability coordinator area parameters, including "Current Status of Bulk Electric Systems elements (transmission or generation including critical auxiliaries such as Automatic Voltage Regulators and Special Protection Systems) and system loading." [25] Entergy states, "In order to monitor the status of a Special Protection System, a reliability coordinator must know whether any of the redundant components of a Special Protection System are non-operational." [26]

28. Entergy also identifies IRO–002–1, Requirement R5, which provides that each Reliability coordinator shall have of the capability to monitor its reliability coordinator area and surrounding reliability coordinator areas "to ensure that potential or actual System Operating Limits or Interconnection Reliability Operating Limit violations are identified." Entergy concludes that reliability coordinators must know whether redundant components of a Special Protection System are operational, in order to monitor the status of the Special Protection System. Entergy also asserts that a reliability coordinator must monitor the status of communication channels in order to meet its obligations to ensure that unplanned events do not interfere with its ability to determine system operating limit violations under IRO–003–2 and IRO–002–1. Entergy concludes that, to the extent the information would be useful to the reliability coordinators, "they already have it."

29. Commenters disagree with the premise that the loss of a Special Protection System communication channel could have an impact on reliability because the remaining channel ensures that the system is able to function.[27] According to ISO/RTO Council and NERC, the loss of a communication channel on a redundant Special Protection System does not require changes to operational protocols, such as by moving towards more conservative operations, because the Special Protection System is expected to operate properly with the other communication channel in service.[28] NERC reports that industry experts determined that a reliability coordinator or transmission operator will operate as usual, and not more conservatively, upon learning that a Special Protection System is operating normally, even though a communication channel is out of service, and objected to the proposal as imposing a reporting burden without a corresponding reliability benefit.

30. According to ISO/RTO Council, the loss of a communication channel does not require specific planning and operating actions based on the particular system conditions being experienced.[29]

31. Some commenters predict that requiring reports on out-of-service communication channels could result in a flood of reports that are not useful to system planning and operation. Bonneville reports that it has over 600 communication channels dedicated to its Special Protection Systems, and notes that some channels are bound to experience technical difficulties or be taken out of service during an outage. Bonneville concludes that requiring its dispatchers to report to the reliability coordinator every time a communication channel fails or is removed from service would result in additional reporting and documentation with no corresponding benefit. Bonneville also commented that "loss of communication channels happens frequently." [30]

32. Several commenters object to the Commission's taking action in an interpretation proceeding to propose changes to the Reliability Standard requirements and propose alternate venues to press any concerns that are identified.[31] ERCOT, on the other hand, objects to the interpretation claiming that NERC should have provided clarity or guidance as to what constitutes a degraded Special Protection System.

II. Discussion

33. The Commission declines to adopt the NOPR proposal and approves NERC's interpretation of IRO–005–1, Requirement R12 and TOP–005–1, Requirement R3 as submitted. The Commission approves the interpretation as consistent with the language of the Reliability Standards, and finds the interpretation just and reasonable. Based on the comments of NERC and the industry that no reliability gap exists, the Commission will rely on their expert opinion and decline to adopt the NOPR proposal to direct the ERO develop modifications to the Reliability Standards. These actions are discussed more fully below.

34. The Commission agrees with the ERO that, with regard to IRO–005–2 Requirement R12, if a redundant Special Protection System with one communication channel out of service can still perform reliably with the remaining channel and its function would therefore not be considered degraded under IRO–005–2.[32] We also agree with the ERO and Entergy that if a reliability coordinator has identified a Special Protection System that is necessary for Reliable Operation, the reliability coordinator can request detailed data as needed, including the status of the components of a Special Protection System.[33] The Reliability Coordinator is obligated to receive and consider data to support its assessment of the performance of the system in order to protect against SOL and IROL events—this could include data about the status of communication facilities.[34] We agree with commenters that, while the specific wording in the Requirement does not compel the affected entities to report the outage of a single communication channel as degraded if the system remains functional, the information can be compelled by the Reliability Coordinator.

35. In the NOPR, the Commission expressed concern that the interpretation may create a reliability gap with regard to the reporting requirements for a Special Protection System that is able to operate as designed, but still poses a reliability risk to the Bulk-Power System with loss of a single communication channel with redundant design. The ERO asserts that the fact "that one communication channel of a Special Protection System may be out of service in no way prevents that Special Protection System from performing its designed function." As such, a system operator would not be required to make changes to its operational protocols. The ERO nevertheless states that "* * * the knowledge of the loss of a communication channel could be of general interest to a reliability

[25] Entergy at 7.

[26] *Id.*

[27] *See* NERC at 3; Bonneville at 3; EEI at 5 and Affidavit of W. Miller; Entergy at 5; ISO/RTO Council at 3, 4; Manitoba Hydro at 4–5.

[28] *E.g.,* NERC at 3; ISO/RTO Council at 3–4.

[29] ISO/RTO Council at 5.

[30] Bonneville at 3.

[31] EEI at 6; NERC at 4.

[32] *See* NERC Petition, Exhibit B at 6 (providing text to interpretation as appendix to IRO–005–1 and TOP–005–1).

[33] *See* NERC Petition, Exhibit B at 5 ("Background Information for Interpretation"); Entergy at 7; *see also* IRO–002–1, Requirement R2 ("Each reliability coordinator shall determine the data requirements to support its reliability coordination tasks and shall request such data.").

[34] IRO–002–1, Requirement R2; *see also* NERC Petition, Exhibit B at 5, "Background Information for Interpretation" (discussing TOP–005–1).

coordinator or transmission operator." Finally, the ERO and ISO/RTO Council indicate that this information is available to reliability coordinators pursuant to requirements in other reliability standards, and is therefore not necessary as a reporting requirement in TOP–005–1.

36. We are persuaded that a requirement to report the outage of a single communication channel where redundant channels exist is unnecessary because both the ERO and ISO/RTO point to existing requirements in other Reliability Standards that would make this information available to the reliability coordinator upon its request.[35] Such requirements provide the reliability coordinator authority to compel such information as it may deem necessary to ensure reliable operation of the Bulk-Power System including information on the outage of communication channels. Our review of the record in this proceeding satisfies the concerns we expressed in the NOPR and therefore we do not find it necessary to establish the NOPR reporting requirement proposal.

37. In light of the Commission's decision not to implement the NOPR proposal concerning the reporting of the loss of a redundant communication channel, we need not address commenters' objections to our proposal. Ultimately, the decision whether the redundancy of a particular system is needed to perform as designed is a judgment call that must be made by the appropriate reliability entities (*i.e.,* the transmission operator and the reliability coordinator).

III. Information Collection Statement

38. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[36] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[37]

39. As stated above, the IRO–005–1 and TOP–005–1 Reliability Standards that are the subject of the approved interpretation was approved in Order No. 693, and the related information collection requirements were reviewed and approved, accordingly.[38] The approved interpretations of IRO–005–1 and TOP–005–1 do not modify or otherwise affect the collection of information already in place.

40. With respect to TOP–005–1, the interpretation clarifies that NERC affirms that transmission operators are required to provide information upon request, without regard to whether the equipment is operating in a degraded state, as posited in the request for an interpretation.[39] Consequently, the interpretation does not change the information that a transmission owner must report, because the requesting entity is free to request the same types of information as before, and the same logs, data, or measurements would be maintained.

41. With respect to IRO–005–1, the interpretation states that a transmission operator is mandated to report the loss of a communication channel, if the loss will result in the failure of a Special Protection System to operate as designed. Thus, the interpretation and the comments received in this rulemaking clarify that the reporting requirements focus on whether a Special Protection System can continue to perform its reliability function.

42. Thus, the interpretations of the current Reliability Standards at issue in this rulemaking will not modify the reporting burden. However, we will submit this Final Rule to OMB for informational purposes.

43. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873].

44. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4638, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*. Please reference OMB Control Number 1902–0244 and the docket number of this rulemaking in your submission.].

IV. Environmental Analysis

45. 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.[40] 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.[41] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

46. The Regulatory Flexibility Act of 1980 (RFA)[42] 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 proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[43] The SBA has established a size standard for electric utilities, stating that 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.[44]

47. Initially, as noted above, this Final Rule addresses an interpretation of the IRO–005–1 and TOP–005–1 Reliability Standards, which were already approved in Order No. 693, and, therefore, does not create an additional regulatory impact on small entities. Therefore, the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small entities.

VI. Document Availability

48. 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

[35] IRO–005–1, Requirement R2; see also the interpretation, Background Information for Interpretation, discussing TOP–005–1.

[36] 5 CFR 1320.11.

[37] 44 U.S.C. 3507(d).

[38] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 945, 1648.

[39] NERC Petition, Exhibit B at 5 (proposing text of interpretation as Appendix 1 to IRO–005–1 and TOP–005–1).

[40] *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).

[41] 18 CFR 380.4(a)(2)(ii).

[42] 5 U.S.C. 601–612.

[43] 13 CFR 121.101.

[44] 13 CFR 121.201, Sector 22, Utilities & n. 1.

business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

49. 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.

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

VII. Effective Date and Congressional Notification

51. These regulations are effective May 26, 2011. 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.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10011 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AC79

[Public Notice 7427]

Exchange Visitor Program—Summer Work Travel

AGENCY: Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department is amending current regulations governing the Summer Work Travel category of the Exchange Visitor Program. The amendments clarify existing policies and implement new procedures to ensure that the Summer Work Travel program continues to foster the objectives of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act). These changes will enhance the integrity and programmatic effectiveness of Summer Work Travel exchanges.

The Department has examined the potential risks and harms related to the Summer Work Travel program and believe that the current regulations do not sufficiently protect national security interests; the Department's reputation; and the health, safety, and welfare of Summer Work Travel program participants. Accordingly, and for reasons discussed more fully below, this rule modifies the Summer Work Travel regulations by establishing different employment placement requirements based on the aliens' countries of citizenship and by requiring sponsors to fully vet the job placements of all program participants. It also clarifies that only vetted U.S. host employers and vetted third party overseas agents or partners (i.e., foreign entities) with whom sponsors have contractual agreements may assist sponsors in the administration of the core functions of their exchange programs. Sponsor monitoring, reporting, and information dissemination requirements are also strengthened.

DATES: The interim final rule will become effective July 15, 2011. The Department will accept comments on the interim final rule from the public up June 27, 2011.

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

- *Online:* Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Designation, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505.
- *E-mail: JExchanges@state.gov.* You must include the RIN (1400–AC79) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505; fax (202) 632–2701.

SUPPLEMENTARY INFORMATION: Summer Work Travel exchange programs have been a cornerstone of U.S. public diplomacy efforts for nearly 50 years, providing an estimated two million foreign college and university students the opportunity to work and travel in the United States during their summer vacations. The popularity of this program arises from its participants' ability to enjoy true cultural exchange experiences by being able to underwrite the cost of their travel through temporary employment in the United States.

Though popular, the program is not without problems. Inadequacies in U.S. sponsors' vetting and monitoring procedures contribute to potentially dangerous or unwelcomed situations for these participants. This past summer, the Department received a significantly increased number of complaints from foreign governments, program participants, their families, concerned American citizens, the media, law enforcement agencies, other federal and local agencies, and the Congress regarding fraudulent job offers, inappropriate jobs, job cancellations on arrival, insufficient number of work hours, and housing and transportation problems. Moreover, the Department of Homeland Security has reported an increase in incidents involving criminal conduct (e.g., money laundering, identity theft, prostitution) in several non-immigrant visa categories. To minimize the riskJ–1 visa holders may become victims of these types of crimes (or actively involved in such conduct) the Department must immediately modify existing regulations. When the health, safety, and welfare of Exchange Visitor Program participants are at risk, the Exchange Visitor Program's usefulness as a public diplomacy tool is jeopardized.

Of particular concern is the criminal nature of some of the complaints associated with aliens travelling to the United States under some non-immigrant visa categories. The Department has been advised by sister law enforcement agencies of numerous documented reports of aliens either knowingly engaging in or becoming hapless victims of and accessories to criminal activities, including money laundering, money mule schemes, and Medicare fraud. Further, the young age and limited sophistication of some Exchange Visitor Program participants underlie a potential vulnerability for trafficking initiatives and criminal schemes targeted at them.

By preventing the deleterious effect that such unchecked risk can have on program participants, the interim final rule can have an immediate effect on the participants' cumulative positive opinions of the United States, thereby meeting the fundamental objective of the Exchange Visitor Program.

To address the problems noted above, the Department has taken a number of steps to improve the integrity of the program. First, in early 2010, the

Department assembled a working group of interested parties, which included representatives from the Department's Office of the Inspector General, the Bureaus of Consular Affairs and Diplomatic Security, and the Office to Monitor and Combat Trafficking in Persons. In October, we invited all Summer Work Travel program sponsors to meet with the Department to discuss the need for new regulations to strengthen the program. In November, we sought and reviewed comments from these sponsors on a number of anticipated regulatory changes and the possible need for a pilot program to strengthen requirements for aliens from certain countries who face greater risks when participating in the program. The Department also reviewed sponsor white papers and engaged the federal law enforcement community and our sister agencies in wide-ranging discussions regarding a workable approach to addressing the identified problems.

Also discussed with the sponsor community and sister agencies was the growing trend among sponsors of exchange visitor programs to outsource the core programmatic functions inherent in the administration of their programs (i.e., screening, selection, orientation, placement, monitoring, and the promotion of mutual understanding). To become designated sponsors, entities are required to demonstrate their experience in international exchange and their ability to provide the core programmatic functions. When they outsource these functions, the Department has no assurance that the third parties who perform these tasks are qualified to take on the required roles of the sponsors. When taken to the extreme, this results in the entities whose resources and experience the Department evaluated prior to designating them as program sponsors becoming mere purveyors of J-visas, leaving the actual program administration to third parties over which the Department and sponsors have diminished degrees of control. Thus, one objective of this interim final rule is to redirect program administration back to sponsors by requiring them, among other things, to more closely scrutinize the reputations of the third parties with whom they do business (i.e., U.S. host employers and foreign entities) and independently vet and confirm all program participants' jobs. This clarification of the sponsors' responsibilities will facilitate the Department's monitoring of sponsor program activities and assist it in the future assessment of underlying causes of problems that may arise in the Summer Work Travel program.

Based on information from the sources identified above and our own trend analysis, the Department has concluded that the risk to the participants' health, safety, and welfare and to U.S. public diplomacy and foreign affairs initiatives warrants immediate changes to the Summer Work Travel regulatory model. Accordingly, the Department is establishing a new Summer Work Travel framework that recognizes potential underlying risks associated historically with participant's countries of origin as well as implementing changes to general program administration that will strengthen the program.

To this end the Department has adopted a pilot program for aliens from Belarus, Bulgaria, Moldova, Romania, Russia, and the Ukraine (the "Pilot Program Countries"), countries that, according to law enforcement agencies are known sources of the types of criminal activity that the Department wishes to avoid. The second step to safeguarding and strengthening the Summer Work Travel program is adoption of the pilot program concept(s) as the model for these amended Summer Work Travel Program regulations. Finally, the Department will closely monitor this exchange activity and intends to perform on-site reviews this year of the largest Summer Work Travel program sponsors (accounting for at least 75% of all aliens participating in this category of exchange) to assess category-wide regulatory compliance and to consult with sponsors about implementation of this interim final rule. Taken together, initial discussions with the sponsor community, sponsor comments in response to this interim final rule, the Department's assessment of the impact of the Pilot Program during the 2011 summer, and feed-back from these on-site reviews, will inform the Department's overall assessment of the success of the new Summer Work Travel program framework and the need for any changes to this interim final rule.

The Department adopts four major changes (and several minor changes) to the Summer Work Travel regulations in order to strengthen sponsors' oversight of both their program participants and the third parties who are allowed to assist them in the administration of the core functions of their programs. We believe that these changes will minimize the risk that program participants will be subjected to abuse or less than satisfactory program experiences. First, only aliens from countries that participate in the Visa Waiver Program can enter the country without pre-placed jobs (though if they do obtain pre-placed jobs, sponsors must vet such job offers as they would those of participants from all other countries). Second, sponsors are required to fully vet the third parties (i.e., U.S. host employers and foreign entities) whom they engage to assist in performing the core functions inherent with the program administration of the Exchange Visitor Program (i.e., screening, selection, orientation, placement, monitoring, and the promotion of mutual understanding). Third, sponsors are required to fully vet all job offers, regardless of whether they, the participants, or foreign entities arrange the placements and regardless of whether the offers are arranged prior to their departure to or following their arrival in the United States. Finally, sponsors will be required to contact active program participants on a monthly basis to monitor both their welfare and their whereabouts. A summary of these and other Summer Work Travel program modifications follows:

Pre-Placement

Under the current regulations, no more than half of a sponsor's program participants may enter the United States without pre-arranged job placements. Because consular officials evaluate eligibility on a case-by-case basis, it was impossible for them to know whether sponsors were complying with this requirement. The interim final rule now links the pre-placement requirement directly to the underlying risk factor (i.e., country of origin). Thus, the interim final rule allows such officers to discern directly from applicants' paperwork whether they are required to be pre-placed.

The new Summer Work Travel regulatory model reflects different risk assessments for aliens, depending on their countries of origin. The Department recognized that a country's participation in the Visa Waiver Program could provide a means of identifying program participants who would experience lower levels of risk while visiting the United States. Governments of participating Visa Waiver Program countries must meet specific security and other requirements, such as timely reporting of incidents and enhanced law enforcement and security-related data sharing with the United States. In addition, countries are designated for inclusion in the Visa Waiver Program only if the Secretary of the Department of Homeland Security, in consultation

with the Secretary of State, establishes that the designation will not compromise security and law enforcement interests of the United States, and that the country satisfies high U.S. border control and document security standards (*see http://travel.state.gov/visa/temp/without/without_1990.html#countries* for a current list of these countries.) Accordingly, this interim final rule recognizes that there is less risk for aliens from Visa Waiver Program countries being brought to the United States under false pretenses or stranded here without jobs or resources if allowed to enter the United States without pre-arranged job placements. If, however, they do secure job placements prior to departure for the United States, sponsors must vet (i.e., confirm the terms, conditions, and viability of) those placements prior to their departure. Aliens from countries other than the Visa Waiver Program countries will be able to enter the United States only after they or their sponsors have secured firm job offers, and their sponsors have similarly vetted them.

Although Public Law 105–277 specifically authorized Summer Work Travel program to operate "without regard to pre-placement requirements," the Department has long required sponsors to find job placements for at least 50 percent (50%) of program participants before they departed their home countries. The interim final rule eliminates this arbitrary percentage and specifically and appropriately links the increased risk to the heightened regulatory requirements. Of the approximately 120,000 Summer Work Travel program participants entering the United States in 2010, however, 13 percent (13%) were from 29 of the 36 Visa Waiver Program countries. If such country-of-origin entry trends continue, implementation of the new approach will result in approximately 87% of all Summer Work Travel participants entering the United States with pre-arranged and vetted jobs. Accordingly, requiring participants from non-Visa Waiver Program countries (including participants from the Pilot Program Countries) to be pre-placed with a vetted job offer will help to ensure that most Summer Work Travel participants will not be stranded in the United States without jobs and resources or be engaged in inappropriate or problematic placements.

Job and Employee Vetting

The interim final rule also requires sponsors to vet U.S. host employers by utilizing publicly available information to confirm that potential host employers are ongoing and viable business entities. Sponsors must obtain and verify host employers' Employer Identification Numbers and verify that host employers meet state-specific workers' compensation requirements. Sponsors and foreign entities acting on their behalf are also prohibited from paying or otherwise providing any incentives to host employers to induce them to provide placements for their participants. Further, the interim final rule requires sponsors to vet all foreign entities (i.e., overseas agents or partners) that assist them in fulfilling the core programmatic functions that may be conducted outside the United States (i.e., screening, selection, and orientation) and maintain current listings of such parties in a new "Foreign Entity Report." The information in this Report is provided to Consular Officials as a means to verify that the foreign entity is a bona fide partner/agent of a US sponsor. The contents of this report have been submitted for OMB approval as a collection and will be required upon approval. Until such approval is received, we encourage sponsors to submit this information voluntarily.

To assist in the recruiting, screening, selection, and orientation of Summer Work Travel participants, sponsors can engage only those vetted foreign entities with whom they have executed written agreements that explain their relationships and identify their respective obligations and who are included in the Foreign Entity Report. These agreements must include annually updated price lists for the Summer Work Travel programs such third parties market on behalf of the sponsors and provisions confirming that they will not: (1) Outsource any of the core programmatic functions covered by the agreement (i.e., screening, selection, and orientation) to any other third party, including staffing or employment agencies; or (2) pay or otherwise provide any incentives to host employers to induce them to provide placements for the participants of the sponsors whose interests they represent. Sponsors must obtain proof that potential foreign entities are bona fide business entities that are appropriately licensed and/or registered to conduct business in the venue(s) where they operate. They must obtain notarized statements from recognized financial entities in such venues that demonstrate the business solvency of potential foreign entities. Such foreign entities must disclose to the sponsors any previous bankruptcy proceedings and any pending legal actions; they must obtain written references from three current business associates; and they must provide summaries of any previous experience with the Exchange Visitor Program. Further, all owners and officers of such foreign entities must be vetted by criminal background checks and provide sponsors with copies of the reports in both the original language and translated into English.

Under the interim final rule, sponsors must vet all jobs (e.g., verify the terms and conditions of such employment and fully vet the identified U.S. host employers) for all participants before they can (in the case of participants from the non-Visa Waiver Program countries) enter the United States or (in the case of participants from Visa Waiver Program countries who do not have jobs upon entry) start work.

Participants may obtain self-placed jobs, whereby they (through a foreign entity or other source) identify their own job placements. Alternatively, they may elect for direct-placed jobs, in which cases, sponsors have contracted with host employers and arranged the employment of Summer Work Travel participants for specified periods, number of hours, and at specified wages. For such direct-placed jobs, the Department recognizes that sponsors and participants enter into quasi or actual contracts regarding the terms of the placements. In such cases, the sponsors have assumed an affirmative obligation to arrange suitable employment for the participants under the terms specified in the agreements. We seek specific comment on this point.

To ensure that Summer Work Travel participants do not work in unsafe or unseemly jobs, the Department has expanded the enumerated list of excluded positions program participants may not fill. Also, to ensure that sponsors maintain sufficient control to effectively administer their exchange programs, the interim final rule clarifies that sponsors may enlist the assistance of only host employers in fulfilling the core programmatic functions that are generally conducted within the United States (i.e., orientation and monitoring). Thus, sponsors may not engage third parties other than host employers—and host employers may not engage any third parties to assist in fulfilling these functions. The Department specifically requests comment on this matter.

Program Administration

All participants must contact their sponsors upon arrival in the United States to inform their sponsors of their current U.S. addresses. Participants without pre-arranged employment may contact their sponsors for job search

assistance and must contact their sponsors upon obtaining job offers. Only once the sponsors vet the job placement can the participant start to work.

This interim final rule further clarifies that applicants must be bona fide students enrolled and participating full time at accredited post-secondary academic institutions located outside the United States at the time of application. Participants must have completed at least one semester (or the quarter or trimester equivalent) in order to qualify to participate. Final year students who apply for the Summer Work Travel program while still in school may participate in the Summer Work Travel program during the school's major academic break that follows their graduation. This rule also limits all students' program participation to the shorter of four months or the length of the long break between academic years at the schools they attend. Whether this break occurs during the winter or summer months in the United States or lasts two, three, or four months is determined in one of two ways. In most countries, consular officials have established country-wide program start and end dates that correspond with typical academic calendars. In other countries, the period of program duration may be tied to specific school calendars.

The new regulations retain the long-standing requirement that sponsors interview potential participants and ensure that selected applicants have sufficient English language skills to travel in the United States and function successfully in their work environments. To make this determination, sponsors may either obtain English language test scores from recognized language skills tests administered by academic institutions or English language schools, or evaluate applicants' language skills during documented sponsor interviews. A new regulatory requirement has been added to document such interviews. The new regulations afford additional flexibility for meeting this requirement by allowing sponsors the option of video-conferencing applicant interviews, rather than conducting them only in person and ensures that the conduct of an interview has been documented. Although foreign entities may assist sponsors in this recruiting function, sponsors are responsible for the final selection of their program participants.

The interim final rule also requires sponsors to provide the following orientation materials to all participants (in addition to the currently required information) prior to departing for the United States: (1) A copy of the Department's Summer Work Travel Participant Letter; (2) a copy of the Department's Summer Work Travel Brochure; (3) the telephone number for the Department's 24/7 toll-free help line; and (4) the telephone numbers for the sponsors' 24/7 immediate contact line. Sponsors are also required to inform participants of their obligations to report their U.S. addresses to their sponsors upon their arrival in the United States as well as any changes in their employment or residence throughout the duration of their programs. As a point of clarification of existing regulations, sponsors are obligated to end the exchange programs of participants who do not report their arrival within ten days following the program start date or who do not report changes in their U.S. addresses or sites of activity within ten days of such moves. Sponsors would generally learn that an unreported move had occurred when they attempt to make monthly contact and cannot reach the participants for ten days. In addition, sponsors continue to be required to inform pre-placed participants of the name and address of their employer, and to disclose any contractual obligations (e.g., the hourly wage, how many hours per week they will work, whether the host employer has arranged housing) related to their acceptance of such paid employment.

The interim final rule retains the requirement that sponsors provide participants from Visa Waiver Countries who do not have pre-arranged and vetted jobs prior to departing from their home countries with information that explains how to seek employment and secure lodging in the United States. Sponsors must also continue to provide rosters of bona fide job opportunities to such participants and undertake reasonable efforts to help them secure placements after their arrival. Sponsors are required to ensure that non-pre-placed participants have sufficient financial resources to support themselves while they are searching for employment. The interim final rule also retains the requirement that sponsors make reasonable efforts to secure job placements for these participants if they have not obtained employment within one week after arriving in the United States.

Monitoring

The interim final rule expands the current obligations of sponsors to monitor their program participants. In addition to providing the currently required emergency assistance, sponsors must now make personal contact with each participant on a monthly basis. Sponsors must document such monthly contacts, which can be in-person, by telephone, or via e-mail. Such routine contact between sponsors and participants is required to ensure that participants are safe, the conditions of employment are being met, and participants are informing their sponsors of their current U.S. addresses.

The interim final rule also adds a new section on host employer obligations. First, host employers are expected to provide program participants with the approximate number of hours of paid employment per week that they agreed to when the sponsors vetted the jobs. Second, they are required to pay participants for any overtime work, in accordance with state-specific and federal employment laws. Further, to assist sponsors in maintaining current and accurate SEVIS records, host employers must promptly notify sponsors when participants start their jobs. Host employers must also notify sponsors in case of any changes in employment conditions, any issues related to the welfare of the participants, or if the participants are not meeting their obligations to the host employers. Sponsors must ensure that participants are placed only with host employers that materially comply with all applicable federal, state, and local occupational health and safety laws; and adhere to Exchange Visitor Program regulations and sponsor program rules, as set forth at § 62.9.

Current regulations allow sponsors either to submit to the Department semi-annual placement reports or list the names and addresses of participants' pre-arranged host employers on Forms DS–2019. The interim final rule requires all sponsors to submit semi-annual placement reports according to a Department-provided format upon OMB approval of the collection. For all participants for whom pre-placement is obtained (i.e., all participants from non-Visa Waiver Program countries and participants from Visa Waiver Program countries who are pre-placed), sponsors may not issue Forms DS–2019 unless they include the vetted host employers' names (i.e., business names), the work addresses (i.e., sites of activity), and the job title of the participants.

The Department had intended to publish the interim final rule in time to be effective when the bulk of program participants entered the country for the summer 2011 season. Discussions with the industry, however, determined that sponsors would not be able to make major changes to their business operations (i.e., vet foreign entities, renegotiate contracts with them, and increase their capacity for securing jobs

prior to the aliens' arrival in the United States) in time to apply these aspects of the regulations to program participants entering the United States from countries other than the Pilot Program Countries. However, there are key monitoring and reporting components of the new regulations that can be implemented immediately. These monitoring provisions will apply to all Summer Work Travel participants who are in the United States on July 15, 2011, the date that sponsors recommended as the effective date of the interim final rule. There are no administrative barriers that should delay the implementation of these important safety-and security-related monitoring provisions. By maintaining monthly contacts with their participants, sponsors will take a more active role in tracking their geographical whereabouts and offering participants on-going support and assistance with any program-related problems during the upcoming summer season. As sponsors often issue Forms DS–2019 as far as four months in advance of a program start date, the interim final rule affords sufficient lead time to allow sponsors issuing Forms DS–2019 after the effective date of this interim final rule (i.e., for participants entering the United States during the 2011–2012 "winter season" and thereafter) to follow the job placement, job vetting, and third party vetting requirements as well.

Taken together, these regulatory modifications, enhancements, and changes are intended to create a new Summer Work Travel paradigm by addressing emerging problems and concerns. By developing better ways to ensure the health, safety, and welfare of its program participants, this interim final rule enhances the integrity of the Summer Work Travel program and continues to build global goodwill through this important public diplomacy initiative.

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act (APA). Pursuant to U.S. Government policy and longstanding practice, the Department of State has supervised either directly or through private sector program sponsors or grantee organizations, those foreign nationals who come to the United States as participants in exchange visitor programs. When problems occur, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems. The purpose of this interim final rule is to protect the health, safety and welfare of aliens entering the United States (often on programs funded by the U.S. Government) for a finite period of time and with a view that they will return to their countries of nationality or last legal permanent residence upon completion of their programs. The Department of State represents that failure to protect the health, safety and welfare of these program participants will have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this interim final rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as an interim final rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function. Moreover, and as discussed above, the Department has been engaged in a lengthy dialogue with the sponsors of Summer Work Travel exchanges, keeping them fully apprised of its vision for reshaping the Summer Work Travel program. The sponsor community, therefore, has had the opportunity to participate in and influence agency decision making at an early stage.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is required unless an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. As discussed in the preamble to this rule, the Department has concluded that the national security, program administration and participant health, safety and welfare considerations would make public comment impracticable and contrary to the public interest. Further, the Department has determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed. For the foregoing reasons, the Department determines that good cause exists to implement this rule as an interim rule under the Administrative Procedure Act, 5 U.S.C. 553(b) and accordingly, adopts this rule on this basis.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This interim final rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this interim final rule is exempt from 5 U.S.C 553, and no other law requires the Department of State to give notice of such rulemaking, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, § 3(b). However, to better inform the public as to the costs and burdens of the Rule upon designated program sponsors, the Department notes that this Rule will affect the operations of 53 corporate, academic, and tax-exempt entities designated by the Department to conduct Summer Work Travel program activities. The Department calculates that these new requirements may require up to three additional hours of work per placement and therefore with 120,000 placements, that 360,000 additional hours of work will be required by program sponsors. At an estimated cost of $20 per hour, the Department projects that these

enhanced selection, screening, vetting, placement, monitoring and evaluation requirements represent an aggregate cost of $7.2 million to the collective Summer Work Travel sponsor community. Of the 53 entities sponsoring SWT placements, 34 have annual revenues of less than 7 million dollars. These 34 entities account for approximately 15,000 of the 120,000 annual SWT exchange participants. Thus an estimated 12% ($864,000) of the additional costs will fall upon small entities. These costs will range from an additional estimated $120 for one small entity having two participants up to an estimated additional $540,000 for a small entity conducting an exchange program with 900 participants. The Department has been advised by both large and small entity sponsors that the additional $60 cost of these security and programmatic safeguards will be passed along either to the foreign national applicant or foreign entity that assists the U.S. entity in arranging these exchange activities. The Department has no reason to believe that this additional $60 program cost to participants will result in a reduction in the number of program participants and notes that this cost increase would represent a 3% increase in the average cost of a participant's program.

The Department has also examined the additional costs associated with employer reporting and job vetting requirements and concludes that these requirements are no different than the existing business practices of designated sponsors currently placing approximately 90% of these student participants with U.S. employers and that, accordingly, there is not additional burden upon employers. The Department estimates that the vetting and reporting requirements require no more than 1 man hour per participant and thus for the 10% of placements where job vetting and reporting requirements are not the current practice and there will be an additional burden of 12,000 man hours spread across an indeterminate number of large and small entities, government and academic employers who will collectively bear an additional financial burden of some $240,000.00 (12,000 hours × $20 per hour). The Department thus certifies that it does not believe that these regulatory changes will have a significant impact upon small businesses.

Executive Order 13563 and Executive Order 12866

The Department of State does not consider this interim final rule to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, as amended by Executive Order 13563. The Department has reviewed the interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders.

Executive Order 12988

The Department of State has reviewed this interim final rule in light of § 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have 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. Therefore, in accordance with § 6 of Executive Order 13132, it is determined that this interim final rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this interim final rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405–0147, Form DS–7000. As part of this rulemaking, the Department is seeking comment regarding the additional administrative burden associated with the collection of information for a new Foreign Entity Report, the documentation of interviews and monthly contact with participants, and the modification of existing semi-annual reporting requirements for the Summer Work Travel Program.

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62.

(3) *Agency form number:* DS–7000.

(4) *Affected public:* This is an expansion and continuation of an existing information collection utilized by the Bureau of Educational and Cultural Affairs in its administration and program oversight of the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The Department seeks comment from Summer Work Travel Program sponsors and other persons directly involved in the administration of the Summer Work Travel Program.

(5) Change to information collected by the Department of State: The existing Placement Report data collection is a current collection required by all Summer Work Travel sponsors and doesn't impose any further record keeping burden. Further, the Department anticipates that the electronic spreadsheet template that will be provided to sponsors for reporting purposes will reduce sponsors' recordkeeping burden and will eliminate their need to submit semi-annual placement reports in a paper report format. A planned Foreign Entity Report is expected to place a minimal additional administrative burden on the 53 currently designated Summer Work Travel program sponsors. The Department believes that the requested information is currently collected by sponsors in their routine administration of their programs. The additional regulatory requirements for documenting interviews and monthly contact with participants are already a standard business practice for some sponsors. The Department outlines the increased cost and burden hours associated with this collection requirement and discussed it fully in the Regulatory Flexibility Act/Executive Order 13272: Small Business section above and also below.

(6) You may submit comments by any of the following methods:

- Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *E-mail: JExchanges@State.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, ECA/EC/D, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505, *Attn:* **Federal Register** Notice Response.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

(7) The Department seeks public comment on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and

• How to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(8) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total number of respondents is estimated to be those 53 organizations designated by the Department to conduct the Summer Work Travel Program activities.

(9) An estimate of the total annual public burden (in hours) associated with the collection: The Department calculates that these new requirements may require up to three additional hours of work per placement for those program sponsors that are not currently documenting participant interviews or actively maintaining monthly contact with their program participants. The Foreign Entity Report is estimated at one burden hour, documenting participant interviews as 30 minutes, and the documentation of monthly contacts at 20 minutes per month. Under the current collection, the semi-annual placement report already is estimated at 4 burden hours under the current paper format. This burden is expected to be reduced based on the new electronic template that will be provided to all Summer Work Travel sponsors. The Department estimates that for 60,000 of the 120,000 annual Summer Work Travel placements, no additional burden will be imposed to the given current business practices of some sponsors. Thus, for the remaining 60,000 participant placements an additional 180,000 hours of work will be imposed on those sponsors not currently maintaining monthly contact with their participants or properly documenting participant interviews.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for Part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.;* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107–56, section 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

■ 2. § 62.32 is revised to read as follows:

§ 62.32 Summer work travel.

(a) *Introduction.* These regulations govern program participation in Summer Work Travel programs conducted by Department of State-designated sponsors pursuant to the authority granted the Department of State under Public Law 105–277.

(b) *Purpose.* The purpose of this program is to provide bona fide foreign students who are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside the United States with the opportunity to work and travel in the United States for the shorter of four months or the length of the long break between academic years at the schools they attend (i.e., the summer break).

(c) *Duration of participation.* Summer work travel participants are authorized to participate in the Exchange Visitor Program for up to four months during their official summer breaks. Extensions of program participation are not permitted.

(d) *Participant screening and selection.* In addition to satisfying the requirements set forth at § 62.10(a), sponsors are solely responsible for adequately screening and making the final selection of their program participants and at a minimum must:

(1) Conduct and document interviews with potential participants either in-person or by video-conference;

(2) Ensure that selected applicants have English language skills sufficient to successfully function on a day-to-day basis in their work environments. Sponsors must verify each participant's English language proficiency either through a recognized language test administered by an academic institution or English language school or through the required documented interview; and

(3) Confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside of the United States and have successfully completed at least one semester, or equivalent, of post-secondary academic study.

(e) *Participant orientation.* In addition to satisfying the requirements set forth at § 62.10(b) and (c), sponsors must provide program participants, prior to participants' departures from their home countries, the following information and/or documentation:

(1) A copy of the Department of State's Summer Work Travel Participant Letter;

(2) A copy of the Department of State's Summer Work Travel Program Brochure;

(3) The Department of State's toll-free help line telephone number;

(4) The sponsor's 24/7 immediate contact telephone number;

(5) Information advising participants of their obligation to notify their sponsors when they arrive in the United States and to provide information, within 10 days, of any change in jobs or residences; and

(6) Information concerning any contractual obligations related to participants' acceptance of paid employment in the United States, if employment has been pre-arranged.

(f) *Participant placement.* Sponsors and foreign entities (i.e., overseas agents or partners acting on their behalf) may not pay or otherwise provide any incentive to host employers to accept program participants for job placements. Sponsors must confirm the placements of all Summer Work Travel participants before the participants may start work, at a minimum, by verifying the terms and conditions of such employment and vetting their identified host employers as set forth at § 62.32(l).

(1) Sponsors of participants who are nationals of non-Visa Waiver Program countries must:

(i) Ensure that all such participants enter the United States with job placements secured in advance by the sponsors (direct-placement) or by the participants (self-placement);

(ii) Fully vet and confirm such placements in advance of placement by, at a minimum, verifying the terms and conditions of such employment and fully vetting their identified host employers as set forth at § 62.32(l); and

(iii) Enter the participants' host employers, sites of activities, and job titles in SEVIS prior to issuing their Forms DS–2019.

(2) Sponsors of participants who are nationals of Visa Waiver Program countries must:

(i) Ensure that participants who enter the United States without job placements secured in advance are nationals of Visa Waiver Program countries;

(ii) Ensure that such participants receive pre-departure information that

explains how to seek employment and secure lodging in the United States;

(iii) Maintain and provide such participants with a roster of bona fide job listings equal to or greater than the number of participants who entered the United States without pre-arranged and confirmed job placements;

(iv) Ensure that such participants have sufficient financial resources to support themselves during their search for employment;

(v) Undertake reasonable efforts to assist any such participant who has not found suitable employment within two weeks of commencing his or her job search; and

(vi) Instruct participants of their obligation to notify their sponsors when they obtain job offers.

(g) *Participant compensation.* Sponsors must inform program participants of Federal Minimum Wage requirements and ensure that at a minimum participants are compensated at the prevailing local wage, which must meet the higher of either the applicable state or the Federal minimum wage requirement, including payment for overtime in accordance with state-specific employment laws.

(h) *Monitoring.* Sponsors must:

(1) Maintain, at a minimum, a monthly schedule of personal contact with program participants. Such contact may be in-person, by telephone, or via electronic mail and must be properly documented. Sponsors must ensure that issues affecting the participants' health, safety, and welfare identified through such contacts are promptly and appropriately addressed; and

(2) Ensure appropriate assistance is provided to participants on an as-needed basis and that sponsors are available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(i) *Internal controls.* Sponsors must utilize organization-specific standard operating procedures for training and supervising all organization employees. In addition, sponsors must establish internal controls to ensure that host employers and/or foreign entities comply with the terms of agreements with such third parties involved in the administration of the sponsors' exchange visitor programs, i.e., affect the core programmatic functions.

(j) *Sponsors' use of third parties.* (1) If sponsors utilize foreign entities to assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (i.e., screening, selection, and orientation), they must obtain written and executed agreements with such third parties. For the purpose of this section, U.S. entities operating outside the United States (or its possessions or territories) are considered foreign entities. These agreements must outline the obligations and full relationship between the sponsors and such third parties on all matters involving the administration of the sponsors' exchange visitor programs;

(2) Written and executed agreements between sponsors and foreign entities acting on their behalf must delineate the respective responsibilities of the sponsors and third parties and include:

(i) Annually updated price lists for Summer Work Travel programs marketed by the foreign entities;

(ii) Representations that such foreign entities will not engage in, permit the use of, or otherwise cooperate or contract with other third parties (including staffing or employment agencies or subcontractors) for the purpose of recruiting or outsourcing any core programmatic functions covered by the agreement (i.e., screening, selection, and orientation); and

(iii) Confirmation that the foreign entities agree not to pay or provide incentives to host employers in the United States to accept program participants for job placements.

(3) Sponsors may utilize only host employers to assist in fulfilling the sponsors' core programmatic functions that are generally conducted within the United States (i.e., orientation and monitoring). Sponsors may not engage third parties other than host employers; and host employers may not engage or subcontract any third parties to assist in fulfilling these functions.

(k) *Screening and vetting of foreign entities.* Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners who assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (i.e., screening, selection, and orientation) and must, at a minimum, review the following documentation for each potential overseas agent or partner:

(1) Proof of business licensing and/or registration to enable it to conduct business in the venue(s) where it operates;

(2) Disclosure of any previous bankruptcy and of any pending legal actions;

(3) Written references from three current business associates or partner organizations;

(4) Summary of previous experience conducting J–1 Exchange Visitor Program activities;

(5) Criminal background check reports (including original and English translation) for all owners and officers of the organization; and

(6) A copy of the sponsor-approved advertising materials the overseas agent or partner intends to use to market the sponsor's program (including original and English translation).

(l) *Vetting host employers.* (1) Sponsors must adequately vet all potential host employers of Summer Work Travel program participants to confirm that the job offers are viable and at a minimum sponsors must:

(i) Make direct contact in person or by telephone with host employers to verify the business owners'/managers' names, telephone numbers, email addresses, street addresses, and professional activities;

(ii) Utilize publicly available information (i.e., Web sites of Secretaries of States, advertisements, brochures, Web sites, and/or feedback from prior participants) to confirm that all job offers have been made by viable business entities;

(iii) Obtain and verify the host employers' Employer Identification Numbers used for tax purposes; and

(iv) Verify the Worker's Compensation Insurance Policy or equivalent in each state where a participant will be placed or, if applicable, evidence of that state's exemption from requirement of such coverage.

(m) *Host employer obligations.* Sponsors must ensure that employers of Summer Work Travel program participants:

(1) Provide participants the number of hours of paid employment per week as identified on the job offer and agreed to when the sponsors vetted the jobs;

(2) Pay those participants eligible for overtime worked in accordance with applicable state or federal law;

(3) Notify sponsors promptly when participants arrive at the work sites to begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of their job placements; or when participants leave their position ahead of their planned departure; and

(4) Contact sponsors immediately in the event of any emergency involving participants or any situation that impacts the welfare of participants.

(n) *Reporting requirements.* Sponsors must electronically submit the following reports utilizing Department-provided templates:

(1) A Placement Report, on January 31 and July 31 of each year, identifying all Summer Work Travel exchange visitor participants who began an exchange program during the preceding six-month

period. The report must include the exchange visitors' names, SEVIS Identification Numbers (or other Department-mandated participant identification numbers), countries of citizenship or legal permanent residence, names of employers, the length of time it took non-pre-placed participants to secure job placements, and other information the Department may deem essential. For participants who change jobs or have multiple jobs during their programs, the report must include all such placements; and

(2) Sponsors are required to maintain current listings of all foreign agents or partners on the Foreign Entity Report by promptly informing the Department of any additions, deletions, or changes to overseas partner information by submitting new versions of the report that reflect all current information. The report must include the names, addresses, and contact information (i.e., telephone numbers and email addresses) of all foreign entities that assist the sponsors in fulfilling the provision of core program services, and other information the Department may deem essential. Sponsors may utilize only vetted foreign entities identified in the report to assist in fulfilling the sponsors' core programmatic functions outside the United States.

(o) *Program exclusions.* U.S. sponsors must not place participants:

(1) In any position in the adult entertainment industry;

(2) In sales positions that require participants to purchase inventory that they must sell in order to support themselves;

(3) In domestic help positions in private homes (e.g., child care, elder care, gardener, chauffeur);

(4) As pedicab or rolling chair drivers or operators;

(5) As operators of vehicles or vessels that carry passengers for hire and/or for which commercial drivers licenses are required;

(6) In any position related to clinical care that involves patient contact; or

(7) In any position that could bring notoriety or disrepute to the Exchange Visitor Program.

Dated: April 21, 2011.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–10079 Filed 4–25–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0996]

Hydroplane Races Within the Captain of the Port Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation, Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility for the Tastin' n' Racin' hydroplane event in Lake Sammamish, WA from 9 a.m. through 6 p.m. on June 11, 2011 and from 9 a.m. through 6 p.m. on June 12, 2011. This action is necessary to restrict vessel movement in the vicinity of the race courses thereby ensuring the safety of participants and spectators during these events. During the enforcement period non-participant vessels are prohibited from entering the designated race areas. Spectator craft entering, exiting or moving within the spectator area must operate at speeds which will create a minimum wake.

DATES: The regulations in 33 CFR 100.1308 will be enforced from 9 a.m. through 6 p.m. on June 11, 2011 and from 9 a.m. through 6 p.m. on June 12, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Ensign Anthony P. LaBoy, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard is providing notice of enforcement of the Special Local Regulation for Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility 33 CFR 100.1308. The Lake Sammamish area, 33 CFR 100.1308(a)(3) will be enforced on June 11, 2011, from 9 a.m. to 6 p.m. and on June 12, 2011 from 9 a.m. to 6 p.m. These regulations can be found in the March 29, 2011 issue of the **Federal Register** (76 FR 17341).

Under the provisions of 33 CFR 100.1308, the regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander.

When this special local regulation is enforced, non-participant vessels are prohibited from entering the designated race areas unless authorized by the designated on-scene Patrol Commander. Spectator craft may remain in designated spectator areas but must follow the directions of the designated on-scene Patrol Commander. The event sponsor may also function as the designated on-scene Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds which will create a minimum wake.

Emergency Signaling: A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the discretion of the designated on-scene Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

This notice is issued under authority of 33 CFR 100.1308 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 11, 2011.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–9985 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0612]

RIN 1625–AA09

Drawbridge Operation Regulation; Isle of Wight (Sinepuxent) Bay, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the US 50 Bridge over Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD. This rule will require any mariner requesting an opening in the

evening hours during the off-season, to do so before the tender office has vacated for the night. The change will ensure draw tender availability for openings. The Coast Guard is also changing the waterway location from Isle of Wight Bay to Isle of Wight (Sinepuxent) Bay. This change is necessary because the waterway is known locally as both Isle of Wight Bay and Sinepuxent Bay. This change will ensure there is no confusion as to the referenced waterway.

DATES: This rule is effective May 26, 2011.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0612 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0612 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Lindsey Middleton, Fifth District Bridge Administration Division, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 9, 2010, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation: Isle of Wight (Sinepuxent) Bay, Ocean City, MD in the **Federal Register** (75 FR 236). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Maryland Department of Transportation (MdTA) has requested a change to the operating procedure for the double-leaf bascule US 50 Bridge. This change would require that the draw shall open on signal; except that, from 6 p.m. to 6 a.m., from October 1 to April 30 of every year, the draw shall open on signal if notice is given to the bridge tender before 6 p.m.

The current regulation, set out in 33 CFR 117.559, requires that the US 50 Bridge over Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, with a vertical clearance of 13 feet above mean high tide in the closed position, shall open on signal; except from October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and from May 25 through September 15, from 9:25 a.m. to 9:55 p.m., the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that, on Saturdays from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

According to the draw tender logs for the past three years, furnished by MdTA, there have been few to no requests for bridge openings from October 1 to April 30, between the hours of 6 p.m. and 6 a.m. By providing notice to the bridge tender before 6 p.m., mariners can plan their transits and minimize delay in accordance with the proposed rule. The majority of the waterway traffic at this bridge site is seasonal recreational boaters. October 1 through April 30 is considered out-of-season and has minimal waterway traffic.

The current regulation, set out in 33 CFR 117.559, locates this waterway as Isle of Wight Bay, mile 0.5, at Ocean City, MD. Local mariners refer to this waterway location as both the Isle of Wight Bay and the Sinepuxent Bay. To clarify any confusion mariners may have, this waterway location will be cited as Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD in the **Federal Register**.

Discussion of Comments and Changes

No comments were received on the proposed rule and no changes were made to the proposed rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The changes are expected to have minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge from 6 p.m. to 6 a.m. from October 1 to April 30. This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation, by requiring mariners from October 1 to April 30, from 6 p.m. to 6 a.m., to give notice to the bridge tender before 6 p.m.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 117.559 is revised to read as follows:

§ 117.559 Isle of Wight (Sinepuxent) Bay.

The draw of the US 50 Bridge, mile 0.5, at Ocean City, shall open on signal, except:

(a) From October 1 through April 30, from 6 p.m. to 6 a.m., the draw shall open if notice has been given to the bridge tender before 6 p.m.

(b) From May 25 through September 15, from 9:25 a.m. to 9:55 p.m., the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that on Saturdays, from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

Dated: April 13, 2011.

William D. Lee,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–9987 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0276]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Beach Thorofare, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Route 30/Absecon Boulevard Bridge across Beach Thorofare, at NJICW mile 67.2, at Atlantic City, NJ. This deviation is necessary to facilitate extensive rehabilitation and maintenance in order to maintain the bridge's operational integrity. Under this deviation, the bascule lift span of the drawbridge will remain in the closed-to-navigation position for the extent of the effective period.

DATES: This deviation is effective from 7 a.m. on September 16, 2011 through 11:59 p.m. on January 13, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0276 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0276 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District; telephone 757–398–6222, e-mail *Waverly.W.Gregory@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation (NJDOT) owns and operates the bascule-lift span of the Route 30/Absecon Boulevard Bridge across Beach Thorofare along the NJICW, at Atlantic City, NJ. The bridge has a vertical clearance, in the closed position, to vessels of 20 feet, above mean high water. The current operating regulations are outlined at 33 CFR 117.733(e), which require that the bridge shall open on signal but only if at least four hours of notice is given; except that from April 1 through October 31, from 7 a.m. to 11 p.m., the draw need only open on the hour.

The contractor, IEW Construction Group, on behalf of NJDOT, has requested a temporary deviation to the existing regulations for the Route 30/Absecon Boulevard Bridge in order to facilitate necessary repairs. The work primarily consists of replacing span locks, substructure and superstructure structural repairs, seismic retrofit of piers, cleaning and painting bearings, upgrading the mechanical and electrical systems and renovating the operator and gate house. Under this deviation, the bascule lift span of the drawbridge will be maintained in the closed-to-navigation position from 7 a.m. on September 16, 2011, through 11:59 p.m. on January 13, 2012.

Bridge opening data, supplied by NJDOT and reviewed by the Coast Guard, revealed vessel openings of the draw span between the months of September and December in 2010 and in January 2011. Specifically, in 2010 from September through December, the bridge opened, respectively, 59, 37, 19, and 4 times for vessels; and, in January 2011, the bridge opened only 3 times for vessels.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

Under this deviation, the navigable channel will not be obstructed so vessels that can pass under the bridge without a bridge opening may continue to do so at anytime. The Atlantic Ocean is an alternate route for vessels with mast heights greater than 20 feet. Due to the nature and extent of the scheduled maintenance, the drawbridge will be unable to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulation is authorized under 33 CFR 117.35.

Dated: April 12, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–9988 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0262]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Roger's Jewelry Bicycle Ride. This deviation allows the bridge to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 10 a.m. to 11 a.m. on May 21, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0262 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0262 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, at Sacramento, CA. The Tower Drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 10 a.m. to 11 a.m. on May 21, 2011 to allow the community to participate in the Roger's Jewelry Bicycle Ride. This temporary deviation has been coordinated with waterway users. There are no scheduled river boat cruises or anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency the drawspan can be opened with 15 minutes advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 7, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–9989 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0212]

RIN 1625–AA00

Safety Zone; Pensacola Bay; Pensacola, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of Pensacola Bay including all waters represented by positions 30°20′40.73″ N 087°17′19.73″ W, 30°20′11.12″ N 087°17′20.31″ W, 30°20′41.51″ N 087°15′01.15″ W, and 30°20′11.76″ N 087°15′01.18″ W creating a box, referred to as the "Show Box". This action is necessary for the protection of persons and vessels on navigable waters during the Blue Angels' air show. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective and enforceable with actual notice from May 3, 2011, through May 4, 2011. Exact enforcement times will be published in the Local Notice to Mariners and broadcasted via a Safety Broadcast Notice to Mariners.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0212 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0212 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Lisa G. Hartley, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–6512 or e-mail *Lisa.G.Hartley@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received an application for a Marine Event Permit on March 23, 2011, from Naval Air Station Pensacola, in Pensacola, FL of their intentions to hold an aerobatic display over Pensacola Bay, Pensacola, FL. Publishing a NPRM is impracticable because it would delay the required safety zone's effective date and immediate action is needed to protect persons and vessels from safety hazards associated with the aerobatic display. The safety zone will be enforced for short durations during a two-day period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard received an application for a Marine Event Permit on March 23, 2011, from Naval Air Station Pensacola, in Pensacola, FL of their intentions to hold an aerobatic display over Pensacola Bay, Pensacola, FL. Additionally, this rule is temporary and will only be enforced for short durations during a two-day period while the aerobatic displays are taking place. Providing a 30 day notice period would delay the effective date and is impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the aerobatic displays.

Background and Purpose

Naval Air Station Pensacola's Blue Angel Air Show will take place over a portion of Pensacola Bay, Pensacola, FL and poses significant safety hazards to both vessels and mariners operating in or near the air show area referred to as the "Show Box". Due to FAA directive 8900.1, this waterway must be closed to transiting watercraft to sterilize the "Show box" during the performances by the U.S. Navy Blue Angels. The COTP Mobile is establishing a temporary safety zone for a portion of Pensacola Bay, Pensacola, FL, to protect persons and vessels during the air performances.

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

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for a portion of Pensacola Bay including all waters represented by positions 30°20′40.73″ N 087°17′19.73″ W, 30°20′11.12′ N 087°17′20.31″ W, 30°20′41.51″ N 087°15′01.15″ W, and 30°20′11.76″ N 087°15′01.18″ W creating a box, referred to as the "Show Box". This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative.

The COTP may be contacted by telephone at 251–441–5976. The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period and enforcement times for the safety zone. This rule is effective from May 3, 2011, through May 4, 2011.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

The safety zone listed in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of Pensacola Bay only during certain times over a two-day period. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the

impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in affected portions of Pensacola Bay during the Naval Air Station Pensacola's Blue Angels Air Show. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves safety for the public and environment and is not expected to result in any significant adverse environmental impact as described in NEPA. An environmental analysis checklist and a categorical exclusion

determination will be made available as directed under the **ADDRESSES** section.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0212 to read as follows:

§ 165.T08–0212 Safety Zone; Pensacola Bay; Pensacola, FL.

(a) *Location.* The following area is a safety zone: a portion of Pensacola Bay including all waters represented by positions 30°20′40.73″ N 087°17′19.73″ W, 30°20′11.12″ N 087°17′20.31″ W, 30°20′41.51″ N 087°15′01.15″ W, and 30°20′11.76″ N 087°15′01.18″ W creating a box, referred to as the "Show Box".

(b) *Enforcement dates.* This rule will be enforced from May 3, 2011, through May 4, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 165 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative.

They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

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

Dated: April 5, 2011.

D.J. Rose,

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

[FR Doc. 2011–9990 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[Docket No. USCG–2002–12702]

RIN 1625–AA48

Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing without change its November 19, 2010, interim rule codifying traffic separation schemes in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. The Coast Guard established these traffic separation schemes under authority of the Ports and Waterways Safety Act.

DATES: This final rule is effective May 26, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–12702 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2002–12702 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact Mr. George Detweiler, U.S. Coast Guard Office of Navigation Systems, telephone 202–372–1566, or e-mail *George.H.Detweiler@uscg.mil.* If you have questions about viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004
ATBA Area to be Avoided
CFR Code of Federal Regulations
CTVS Cooperative Vessel Traffic Service
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
NPRM Notice of Proposed Rulemaking
NOAA National Oceanic and Atmospheric Administration
PARS Port Access Route Study
PWSA Ports and Waterways Safety Act
SNPRM Supplemental Notice of Proposed Rulemaking
TSS Traffic Separation Scheme
U.S.C. United States Code
VTS vessel traffic service

II. Regulatory History

On August 27, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes: In the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia" in the **Federal Register** (67 FR 54981). We received nine letters commenting on the NPRM. The commenters did not request a public meeting, and none was held.

On November 19, 2010, the Coast Guard published an interim rule (75 FR 70818) that codified existing Traffic Separation Schemes (TSSs) in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. The Coast Guard did not publish a Supplemental Notice of Proposed Rulemaking (SNPRM) for this rule, citing the Administrative Procedure Act "good cause" exception at 5 U.S.C. 553(b)(B) in the interim rule. The interim rule sought comments on the enumerated Traffic Separation Schemes. The comment period closed January 3, 2011, and we received no

public comments on the interim rule. No public meeting was requested and none was held. The interim rule became effective on January 18, 2011. There are no changes from the interim rule to this final rule.

III. Basis and Purpose

With this rule the Coast Guard finalizes the codification of the traffic separation schemes (TSSs) identified above. The Coast Guard created each of these TSSs after conducting a Port Access Route Study (PARS) in accordance with the Ports and Waterways Safety Act (PAWSA) 33 U.S.C. 1221–1232. Each TSS that is part of this rulemaking is shown on nautical charts, is described in the United States Coast Pilot, was implemented by the International Maritime Organization, and is described in "Ships Routeing," Tenth Edition, 2010. Each TSS has also been codified in the CFR since January 18, 2011, when the interim rule became effective. For a full discussion of the basis and purpose of this rulemaking see the interim rule (75 FR 70818, 70819).

IV. Discussion of Comments and Changes

We received no public comments in response to our interim rule. Accordingly, the Coast Guard has made no changes in this final rule. A full discussion of the provisions of this rule may be found in the "Discussion of Interim Rule" section of the interim rule. (75 FR 70818, at 70820).

V. Regulatory Analyses

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

A. Executive Order 12866 and Executive Order 13563

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

As previously discussed, the TSSs finalized by this final rule were codified by the interim rule, implemented by IMO, and are reflected on current nautical charts and in nautical publications. We anticipate no increased costs for vessels traveling within the aforementioned areas. These internationally recognized traffic separation schemes provide better routing order and predictability, increase maritime safety, and reduce the potential for collisions, groundings, and hazardous cargo spills.

By finalizing the interim rule, we complete the process of recording the latitudes and longitudes of the TSSs' coordinates in the CFR tables and make it easier for the public to reference our regulations when recommending modifications or other operational considerations. This rule finalizes incorporation of the TSSs in the CFRs and does not impact mariner actions or expectations.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule has a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As this rule serves to finalize in the CFR TSSs that have already been implemented, we estimate that there will be no increased costs due to this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule does not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If you believe that this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Office of Navigation Systems, telephone 202–372–1566. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it has implications of federalism. Conflict preemption principles apply to PWSA Title I, and the TSSs in this rule are issued under the authority of PWSA Title I. These TSSs are specifically intended to have preemptive impact over State law covering the same subject matter in the same geographic area.

Title I of PWSA (33 U.S.C. 1221 *et seq.*) authorizes the Secretary to issue regulations to designate TSSs to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs that are the subject of this rule, we consulted with the affected State and Federal pilots' associations, vessel operators, users, United States and Canadian Vessel Traffic Services, Canadian Coast Guard and Transport Canada representatives, environmental advocacy groups, Native American tribal groups, and all affected stakeholders.

Presently, there are no Washington State laws or regulations concerning the same subjects as those contained in this rule. We understand that the State does not contemplate issuing any such regulations. It should be noted that, by virtue of the PWSA authority, the TSSs in this rule preempt any State rule on the same subject.

Foreign vessel owners and operators usually become aware of TSSs when the TSSs are added to the United States Coast Pilot and the nautical charts that are required by 33 CFR 164.33 to be on each ship operating in U.S. waters. Foreign vessel owners and operators also become aware of TSSs through their national IMO delegation and IMO publications.

The individual States of the United States are not represented at the IMO as that is the role of the Federal Government. The U.S. Coast Guard is the principal agency responsible for advancing the interests of the United States at the IMO. In this role, we solicit comments from the stakeholders through public meetings and develop a unified U.S. position prior to attending sessions of the IMO Subcommittee on Safety of Navigation and the Maritime Safety Committee where TSSs are discussed.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

We have reviewed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have "tribal implications" under that Order (*i.e.,* those that have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes) require the preparation of a tribal summary impact statement. This rule will not have implications of the kind envisioned under the Order because it will not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Whether or not the Executive Order applies in this case, it is the policy of the Department of Homeland Security and the U.S. Coast Guard to engage in meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications under the Presidential Memorandum of November 5, 2009, (74 FR 57881, November 9, 2009), and to seek out and consult with Native Americans on all of its rulemakings that may affect them. We regularly consulted and collaborated with the Tribes throughout the PARS and this rulemaking. For a complete discussion of these consultations see the interim rule (75 FR 70818, 70825).

In the IR, the Coast Guard invited comments on how the codification of the existing TSSs might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order. We received no comments to our request.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards, nor is the Coast Guard aware of the existence of any standards that address these TSSs. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction. This rule involves navigational aids, which include TSSs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

Accordingly, the interim rule amending 33 CFR part 167, subpart B, which was published at 75 FR 70818 on November 19, 2010, is adopted as a final rule.

Dated: April 11, 2011.

Dana A. Goward,

U.S. Coast Guard, Director of Marine Transportation Systems Management.

[FR Doc. 2011–9895 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[Docket No. USCG–2010–0718]

RIN 1625–AB55

Traffic Separation Schemes: In the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing without change its December 13, 2010, interim rule codifying traffic separation schemes in the approaches to Portland, ME; in the approaches to Boston, MA; in the approaches to Narragansett Bay, RI and Buzzards Bay, MA; and in the approaches to the Cape Fear River, NC, and updating the then-current regulations for the traffic separation scheme in the approaches to Chesapeake Bay, VA. The Coast Guard established these traffic separation schemes under authority of the Ports and Waterways Safety Act.

DATES: This final rule is effective May 26, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0718 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0718 in the "Keyword" box, and then clicking "Search".

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. George Detweiler, U.S. Coast Guard Office of Navigation Systems, telephone 202–372–1566, or e-mail *George.H.Detweiler@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004
ATBA Area to be Avoided
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
IMO International Maritime Organization
NOAA National Oceanic and Atmospheric Administration
PARS Port Access Route Study
PAWSA Ports and Waterways Safety Act
TSS Traffic Separation Scheme
U.S.C. United States Code

II. Regulatory History

On December 13, 2010, the Coast Guard published an interim rule (75 FR 77529) that codified existing Traffic Separation Schemes (TSSs) in the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA; and Cape Fear River, NC. The Coast Guard did not publish a Notice of Proposed Rulemaking (NPRM) for this rule under the Administrative Procedure Act "good cause" exception at 5 U.S.C. 553(b)(B). The interim rule sought comments on the enumerated TSSs. The comment period closed December 28, 2010, and we received no public comments on the interim rule. No public meeting was requested and none was held.

The interim rule became effective on January 12, 2011. There are no changes from the interim rule to this final rule.

III. Background

With this rule, the Coast Guard finalizes without change the codification of the traffic separation schemes (TSSs) identified above. The Coast Guard created each of these TSSs after conducting a Port Access Route Study (PARS) in accordance with the Ports and Waterways Safety Act (PAWSA) 33 U.S.C. 1221–1232. Each TSS that is part of this rulemaking is shown on nautical charts, is described in the United States Coast Pilot, was implemented by the International Maritime Organization, and is described in "Ships Routeing," Tenth Edition, 2010. Each TSS has also been codified in the CFR since January 12, 2011, when the interim rule became effective. For a full discussion of the basis and purpose of this rulemaking see the interim rule (75 FR 77529, 77530).

IV. Discussion of Comments and Changes

We received no public comments in response to our interim rule. Accordingly, the Coast Guard has made no changes in this final rule. A full discussion of the provisions of this rule may be found in the "Discussion of Interim Rule" section of the interim rule. (75 FR 77529, at 77531).

V. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. We summarize our analyses based on 13 of these statutes or executive orders in the paragraphs that follow.

A. Executive Order 12866 and Executive Order 13563

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

As previously discussed, the TSSs finalized by this final rule were codified by the interim rule, implemented by IMO, and are reflected on current nautical charts and in nautical publications. We anticipate no increased costs for vessels traveling within the aforementioned areas. These internationally recognized traffic separation schemes provide better routing order and predictability, increase maritime safety, and reduce the potential for collisions, groundings, and hazardous cargo spills.

By finalizing the interim rule we complete the process of recording the latitudes and longitudes of the TSSs' coordinates in the CFR tables and make it easier for the public to reference our regulations when recommending modifications or other operational considerations. This rule finalizes incorporation of the TSSs in the CFR and does not impact mariner actions or expectations.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule has a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As this rule serves to finalize in the CFR TSSs that have already been implemented, we estimate that there will be no increased costs due to this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this final rule does not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If you believe this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Detweiler, Office of Navigation Systems, telephone 202–372–1566. The U.S. Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the U.S. Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it has federalism implications. Conflict preemption principles apply to PWSA Title I, and the TSSs in this rule are issued under the authority of PWSA Title I. These TSSs are specifically intended to have preemptive impact over State law covering the same subject matter in the same geographic area.

Title I of PWSA (33 U.S.C. 1221 *et seq.)* authorizes the Secretary to issue regulations to designate TSSs to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs that are the subject of this rule, we have sought input from the public and consulted with the affected State and Federal pilots' associations, vessel operators, users, environmental advocacy groups, and all affected stakeholders.

Presently, there are no state laws or regulations in the States affected by this rule concerning the same subjects as those contained in this rule. We understand that the affected States do not contemplate issuing any such regulations. It should be noted that, by virtue of the PWSA authority, the TSSs in this rule preempt any State rule on the same subject.

Foreign vessel owners and operators usually become aware of TSSs when the TSSs are added to the United States Coast Pilot and the nautical charts that are required by 33 CFR 164.33 to be on each ship operating in U.S. waters. Foreign vessel owners and operators also become aware of TSSs through their national IMO delegation and IMO publications.

The individual States of the United States are not represented at the IMO as that is the role of the Federal Government. The U.S. Coast Guard is the principal agency responsible for advancing the interests of the United States at the IMO. In this role, we solicit comments from the stakeholders through public meetings and develop a unified U.S. position prior to attending sessions of the IMO Subcommittee on Safety of Navigation and the Maritime Safety Committee where TSSs are discussed.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

We have reviewed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have "tribal implications" under that Order (i.e., those that have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes) require the preparation of a tribal summary impact statement. This rule will not have implications of the kind envisioned under the Order because it will not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Whether or not the Executive Order applies in this case, it is the policy of the Department of Homeland Security and the U.S. Coast Guard to engage in meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications under the Presidential Memorandum of November 5, 2009, (74 FR 57881, November 9, 2009), and to seek out and consult with Native Americans on all of its rulemakings that may affect them.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards, nor is the Coast Guard aware of the existence of any standards that address these TSSs. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction. This rule involves navigational aids, which include TSSs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 167

Harbors, Marine safety, Navigation (water), Waterways.

Accordingly, the interim rule amending 33 CFR part 167, subpart B, which was published at 75 FR 77529 on December 13, 2010, is adopted as a final rule.

Dated: April 4, 2011.

Dana A. Goward,

U.S. Coast Guard, Director of Marine Transportation Systems Management.

[FR Doc. 2011–9892 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0946; FRL–9294–7]

Approval and Promulgation of Air Quality Implementation Plans; IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation Plan (SIP) for ozone. The State is revising its definition of volatile organic compound (VOC) to add two chemical compounds to the list of compounds that are exempt from being considered a VOC. This revision is based on EPA's 2009 determination that these two compounds do not significantly contribute to ozone formation.

DATES: This direct final rule will be effective June 27, 2011, unless EPA receives adverse comments by May 26, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0946, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0946. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?

A. When did the State submit the SIP revision to EPA?

The Illinois Environmental Protection Agency (Illinois EPA) submitted a revision of the Illinois SIP provision at 35 Illinois Administrative Code (IAC) 211.7150(a) to EPA for approval on October 25, 2010. The SIP revision at 35 IAC 211.7150(a) updates the definition of "volatile organic material (VOM) or volatile organic compound (VOC)."

B. Did Illinois hold public hearings on this SIP revision?

The Illinois Pollution Control Board held a public hearing on the proposed SIP revision on November 19, 2009. The Board received public comments only from Illinois EPA; these comments were in support of the proposed revision.

II. What is EPA approving?

EPA is approving an Illinois SIP revision that adds to the list of compounds that are exempt from being considered a VOM or VOC. On October 25, 2010, Illinois EPA submitted its revision to Title 35 of IAC 211.7150(a), the state's VOC exemption list, with the addition of two chemical compounds—propylene carbonate and dimethyl carbonate, requesting that this revised rule be incorporated into the Illinois SIP in place of the current 35 IAC 211.7150(a). Compounds listed under 35 IAC 211.7150(a) are excluded from the definition of a VOM or VOC. Illinois EPA took this action based on EPA's determination that these compounds have negligible photochemical reactivity. (See 74 FR 3437, January 20, 2009.)

III. What is EPA's analysis of the SIP revision?

In 2009, EPA evaluated petitions submitted by manufacturers asking EPA to exempt propylene carbonate and dimethyl carbonate from the definition of VOC and determined that the level of reactivity of these two chemical compounds is negligible. EPA concluded that these two compounds make a negligible contribution to tropospheric ozone formation (74 FR 3437, Jan. 21, 2009). Therefore, on January 21, 2009, EPA amended 40 CFR 51.100(s)(1) to exclude propylene carbonate and dimethyl carbonate from the definition of VOC for purposes of preparing SIPs to attain the national ambient air quality standard for ozone under Title I of the Clean Air Act (74 FR 3437). EPA's action became effective on February 20, 2009. Illinois EPA's SIP revision is consistent with EPA's action amending EPA's definition of VOC at 40 CFR 51.100(s).

IV. What action is EPA taking today?

EPA is approving a revision to the Illinois SIP for ozone which is consistent with EPA's 2009 action revising the definition of VOC. The Illinois SIP revision adds propylene carbonate and dimethyl carbonate compounds to the list of compounds considered exempt from being a VOC compound at 35 IAC 211.7150(a).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 27, 2011 without further notice unless we receive relevant adverse written comments by May 26, 2011. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective June 27, 2011.

V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 27, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compound.

Dated: April 4, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(187) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(187) On October 25, 2010, Illinois submitted revised regulations that are consistent with 40 CFR 51.100(s)(1), as amended by 74 FR 3437. The compounds propylene carbonate and dimethyl were added to the list of negligibly reactive compounds excluded from the definition of VOC in 35 IAC 211.7150(a).

(i) *Incorporation by reference.* Illinois Administrative Code Title 35: Environmental Protection, Part 211: Definitions and General Provisions, Section 211.7150: Volatile Organic Matter (VOM) or Volatile Organic Compound (VOC), Subsection 211.7150(a). Effective January 11, 2010.

[FR Doc. 2011–10027 Filed 4–25–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2800

[WO 300–1430–PQ]

RIN 1004–AE19

Segregation of Lands—Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of interim temporary final rule and opportunity to comment.

SUMMARY: The Bureau of Land Management (BLM) is issuing this interim temporary final rule (Interim Rule) to amend the BLM's regulations found in 43 CFR parts 2090 and 2800 by adding provisions allowing the BLM to temporarily segregate from the operation of the public land laws, by publication of a **Federal Register** notice, public lands included in a pending or future wind or solar energy generation right-of-way (ROW) application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization under the BLM's ROW regulations, in order to promote the orderly administration of the public lands. If segregated under this rule, such lands will not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (Mining Law), but not the Mineral Leasing Act of 1920 (Mineral Leasing Act) or the Materials Act of 1947 (Materials Act), subject to valid existing rights, for a period of up to 2 years. This Interim Rule is effective immediately upon publication in the **Federal Register** for a period not to exceed 2 years after publication, but public comments received within 60 days of the publication of this rule will be considered by the BLM. Any necessary changes will be made to the Interim Rule. The BLM is also publishing in today's **Federal Register** a proposed rule that would make this segregation authority permanent. At the completion of the notice and comment rulemaking process for the proposed rule, or at the end of 2 years, whichever occurs first, this Interim Rule will expire.

DATES: *Effective date:* The Interim Rule is effective April 26, 2011 through April 26, 2013.

Comment deadline: You should submit your comments on the Interim Rule on or before June 27, 2011. The BLM need not consider, or include in the administrative record for the Interim Rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**).

ADDRESSES: Mail: Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, *Attention:* Regulatory Affairs, Washington, DC 20003. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Ray Brady at (202) 912–7312 or the Division of Lands, Realty, and Cadastral Survey at (202) 912–7350 for information relating to the BLM's renewable energy program or the substance of the Interim Rule, or Ian Senio at (202) 912–7440 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

While this Interim Rule is effective immediately upon publication in the **Federal Register**, the BLM still seeks the public's input and will consider any comments on the Interim Rule received within 60 days after the date of publication (*see* **DATES**).[1] If the BLM

[1] As noted above, the BLM has also published, concurrently with this Interim Rule, a proposed rule that would make permanent the segregation authority included here. There will be a separate opportunity for public comment on the proposed rule as outlined in the **Federal Register** notice for that rule.

determines that substantive comments received during the comment period warrant it, the BLM may issue a further interim temporary final rule to address those comments and make any necessary changes. Any further interim temporary final rule would still be subject to the 2-year effective period as of the date of publication for this Interim Rule.

If you wish to comment, you may submit your comments by one of several methods:

You may mail comments to Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19.

You may deliver comments to U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, *Attention:* Regulatory Affairs, Washington, DC 20003; or

You may access and comment on the Interim Rule at the Federal eRulemaking Portal by following the instructions at that site (*see* **ADDRESSES**).

Written comments on the Interim Rule should be specific, should be confined to issues pertinent to the Interim Rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the Interim Rule that the comment is addressing.

The BLM need not consider or include in the Administrative Record for the Interim Rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Division of Regulatory Affairs, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions at this Web site.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Congress has directed the Department of the Interior (Department) to facilitate the development of renewable energy resources. Promoting renewable energy is one of this Administration's and this Department's highest priorities. In Section 211 of the Energy Policy Act of 2005 (119 Stat. 660, Aug. 8, 2005) (EPAct), Congress declared that before 2015 the Secretary of the Interior should seek to have approved non-hydropower renewable energy projects (solar, wind, and geothermal) on public lands with a generation capacity of at least 10,000 megawatts (MW) of electricity. Even before the EPAct was enacted by Congress, President Bush issued Executive Order 13212, "Actions to Expedite Energy-Related Projects" (May 18, 2001), which requires Federal agencies to expedite the production, transmission, or conservation of energy.

After passage of the EPAct, the Secretary of the Interior issued several orders emphasizing the importance of renewable energy development on public lands. On January 16, 2009, Secretary Kempthorne issued Secretarial Order 3283, "Enhancing Renewable Energy Development on the Public Lands," which states that its purpose is to "facilitate[ ] the Department's efforts to achieve the goal Congress established in Section 211 of the * * * [EPAct] to approve non-hydropower renewable energy projects on the public lands with a generation capacity of at least 10,000 megawatts of electricity by 2015." The order also declared that "the development of renewable energy resources on the public lands will increase domestic energy production, provide alternatives to traditional energy resources, and enhance the energy security of the United States."

Approximately 1 year later, Secretary Salazar issued Secretarial Order 3285A1, "Renewable Energy Development by the Department of the Interior" (Feb. 22, 2010), which reemphasized the development of renewable energy as a priority for the Department. The order states: "Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. Agencies and bureaus within the Department will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources." As a result of these and other initiatives, the interest in renewable energy development on public lands has increased significantly.

In addition to these specific directives, the BLM is charged generally with managing the public lands for multiple uses under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, *et seq.,* including for mining and energy development. In some instances, different uses may present conflicts. For example, a mining claim located within a proposed ROW for a utility-scale solar energy generation facility could impede the BLM's ability to process the ROW application because the Federal government's use of the surface cannot endanger or materially interfere with a properly located mining claim. In order to help avoid such conflicts while carrying out the Congressional and Executive mandates and direction to prioritize the development of renewable energy, the BLM is issuing the Interim Rule. The Interim Rule will help promote the orderly administration of the public lands by giving the BLM a tool to minimize potential resource conflicts between ROWs for proposed solar and wind energy generation facilities and other uses of the public lands. Under existing regulations, lands within a solar or wind energy generation ROW application or within an area identified by the BLM for such ROWs, unlike lands proposed for exchange or sale, remain open to appropriation under the public land laws, including location and entry under the Mining Law, while BLM is considering the ROW.

Over the past 5 years, the BLM has processed 24 solar and wind energy development ROW applications. New mining claims were located on the public lands described in two of these proposed ROWs during the BLM's consideration of the applications. Many of the mining claims in the two proposed ROWs were not located until after the existence of the wind or solar ROW application or the identification of an area by the BLM for such ROWs became publicly known. In addition, over the past 2 years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming and 216 new mining claims were located within solar energy ROW application areas. In the BLM's experience, some of these claims are likely to be valid, but others are likely to be speculative and not located for true mining purposes. As such, the latter are likely filed for no other purpose than to provide a means for the

mining claimant to compel some kind of payment from the ROW applicant to relinquish the mining claim. The potential for such a situation exists because, while it is relatively easy and inexpensive to file a mining claim, it can be difficult, time-consuming, and costly to prove that the mining claim was not properly filed or does not contain a valid discovery. Regardless of the merits of a particular claim, the location of a mining claim in an area covered by a ROW application (or identified for such an application) creates uncertainty that interferes with the orderly administration of the public lands. This uncertainty makes it difficult for the BLM, energy project developers, and institutions that finance such development to proceed with such projects because a subsequently located mining claim potentially precludes final issuance of the ROW and increases project costs, jeopardizing the planned energy development.

For example, the location of a new mining claim during the pendency of the BLM's review process for a ROW application could preclude the applicant from providing a concrete proposal for their use and occupancy of the public lands. This is because under the Mining Law, a ROW cannot materially interfere with a previously located mining claim. Since all properly located claims are treated as valid until proven otherwise, the filing of any mining claim can substantially delay the processing of a ROW application. As a result, a ROW applicant could either wait for the BLM to determine the validity of a claim, or the applicant could choose to modify or relocate its proposed surface use to avoid conflicts with the newly located mining claim, leading to additional expense, which could jeopardize the renewable energy project.[2] The BLM's processing time for the ROW application could be significantly increased if any changes necessitated by the newly located mining claim require the BLM to undertake any additional analyses, such as those required by the National Environmental Policy Act 42 U.S.C. 4321 *et seq.* (NEPA). Under these circumstances, the BLM's ability to administer the public lands in an orderly manner is impeded.

This Interim Rule is needed to provide the BLM with the necessary authority to ensure the orderly administration of the public lands and to prevent conflicts between competing uses of those lands. By allowing for temporary segregation, it will enable the BLM to prevent new resource conflicts from arising as a result of new mining claims that may be located within land covered by any currently pending or future wind or solar energy generation facility ROW applications or in any areas identified by the BLM for such ROWs pursuant to its ROW regulations. Temporary segregation is generally sufficient because once a ROW has been authorized, subsequently located mining claims would be subject to the previously authorized use, and any future mining claimant would have notice of such use.

The Interim Rule supplements the authority contained in 43 CFR subpart 2091 to allow the BLM to segregate from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, public lands included in a pending or future wind or solar energy generation ROW application or public lands identified by the BLM for a wind or solar energy generation ROW authorization under 43 CFR subpart 2804, subject to valid existing rights.[3] This Interim Rule does not affect valid existing rights in mining claims located before any segregation made pursuant to this Interim Rule. The Interim Rule also does not affect ROW applications for uses other than wind or solar energy generation facilities.

Segregations under the Interim Rule would be accomplished by publishing a notice in the **Federal Register** and would be effective upon the date of publication. The BLM considered a rule that would allow for segregation through notation to the public land records, but it rejected this approach because it would not provide the public with the same level of notice that a **Federal Register** notice would accomplish. The Interim Rule provides for segregation periods of up to 2 years. The Interim Rule does not authorize the BLM to continue the segregation after a final decision on a ROW has been made. Finally, not all wind or solar ROW applications would lead to a segregation, as the BLM may reject some applications and others may not require segregation because conflicts with mining claims are not anticipated.

Segregation rules, like the Interim Rule, have been held to be "reasonably related" to the BLM's broad authority to issue rules related to "the orderly administration of the public land laws,"[4] because they allow the BLM to protect an applicant for an interest in such lands from "the assertion by others of rights to the lands while the applicant is prevented from taking any steps to protect" its interests because it has to wait for the BLM to act on its application.[5] It is for this purpose that existing regulations at 43 CFR subpart 2091 provide the BLM with the discretion to segregate lands that are proposed for various types of land disposals, such as land sales, land exchanges, and transfers of public land to local governments and other entities under the Recreation and Public Purposes Act of 1926. These regulatory provisions allowing segregations were put in place over the years to prevent resource conflicts, including conflicts arising from the location of new mining claims, which could create encumbrances on the title of the public lands identified for transfer out of Federal ownership under the applicable authorities.

Such a situation occurred in Nevada, and the proposed land purchaser chose to pay the mining claimant to relinquish his claims in order to enable the sale to go forward. In fact, in the land sales context, the segregative period was increased from 270 days to a maximum term of 4 years, as it was found that the original segregative period was insufficient and that conflicting mining claims were being located before sales could be completed. The Interim Rule will provide the BLM the same flexibility it currently has for land disposals by allowing the BLM to temporarily segregate lands that are included in pending or future applications for solar and wind facility ROWs or on lands identified by the BLM for such ROWs. This will allow for the orderly administration of the public lands by eliminating the potential for conflicts with mining claims located after the BLM publishes a **Federal Register** notice of such ROW applications or areas.

As noted above, the development of renewable energy is a high priority for the Department of the Interior and the BLM. The location of mining claims, however, under certain circumstances, may impede the BLM's ability to administer the public lands in an orderly manner and carry out its Congressional and Executive mandate to facilitate renewable energy development

[2] This uncertainty may also discourage banks from financing such projects.

[3] The existing regulations define segregation as "the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands." 43 CFR 2091.0–5(b)

[4] *See Bryon* v. *United States,* 259 F. 371, 376 (9th Cir. 1919); *Hopkins* v. *United States,* 414 F.2d 464, 472 (9th Cir. 1969).

[5] *See, e.g., Marian Q. Kaiser,* 65 I.D. 485 (Nov. 25, 1958).

on those lands because the BLM currently lacks the ability to maintain the status quo on such lands while it is processing a ROW application for a wind or solar energy generation facility. This Interim Rule will help the BLM maintain the status quo and prevent potential resource use conflicts by allowing the BLM to temporarily segregate lands being considered for a wind or solar energy generation facility. Based on these considerations, the BLM has determined that it has "good cause" under the Administrative Procedure Act (APA) to forgo the APA's normal notice and comment requirements and make the provisions outlined below effective immediately for a temporary period, while it conducts a full notice and comment rulemaking process on a proposed rule, published concurrently in today's **Federal Register**, that would make the segregation authority permanent. The proposed rule would also allow segregations made under it to be extended under certain circumstances.

Under the APA, agencies can dispense with the standard notice and comment procedures and make a rule effective immediately when such procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B), 553(d)(3). Publishing this Interim Rule for public comment prior to its implementation is contrary to the public interest because it could negate the rule's very purpose by resulting in a potential increase in the location of mining claims in areas covered by pending ROW applications or in areas included in future ROW applications prior to those applications being acted on by the BLM. The location of such mining claims could impede the Department's ability to process those ROW applications and potentially prevent the Department from meeting the renewable energy goals established by Congress and the Secretary of the Interior. For these reasons and those stated above, the BLM finds that it has "good cause" to publish this rule as an interim temporary final rule that is effective immediately. Recognizing, however, that the "good cause" exception is to be used sparingly by agencies and limited to circumstances in which the delay attributed to the notice-and-comment process would do genuine harm, the BLM is making this Interim Rule effective only on a temporary basis—for a period not to exceed 2 years. As noted above, the BLM published today, in the same issue of the **Federal Register**, a proposed rule allowing for the temporary segregation of the public lands for the same purposes as described in this Interim Rule. The Interim Rule will expire after 2 years or upon the completion of the notice and comment rulemaking process for the proposed rule, whichever occurs first.

While the comment process on the proposed rule involves the same regulatory provisions as outlined below, the BLM recognizes the importance of also receiving public input on this Interim Rule. Therefore, the BLM is also soliciting, as noted above, public comments as a part of this temporary interim final rulemaking process. After the comment period on the Interim Rule, the BLM will review the comments received and may issue a further temporary final rule with any necessary changes, prior to the expiration of the 2-year effective period for this Interim Rule.

III. Section-by-Section Analysis

This Interim Rule revises 43 CFR 2091.3–1 and 2804.25 by adding language that allows the BLM to segregate, if the BLM determines it to be necessary for the orderly administration of the public lands, by publication of a **Federal Register** notice. This authority will be limited to public lands included in a pending or future wind or solar energy ROW application, or public lands identified by the BLM for a wind or solar energy generation ROW authorization under the BLM's ROW regulations. If segregated under this rule, such lands, during the limited segregation period, will not be subject to appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, subject to valid existing rights.

The new language also specifies that the segregative effect terminates and the lands will automatically reopen to appropriation under the public land laws, including the mining laws: (1) Upon the BLM's issuance of a decision regarding whether to issue a ROW authorization for the solar or wind energy generation proposal; (2) Upon publication of a **Federal Register** notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. The segregation would be effective for a period of up to 2 years. This Interim Rule is only effective for a period of 2 years from the date of its publication in the **Federal Register**.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This Interim Rule is not a significant regulatory action [6] and is not subject to review by the Office of Management and Budget under Executive Order 12866. The Interim Rule provides the BLM with regulatory authority to segregate public lands included within a pending or future wind or solar energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization, from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, if the BLM determines that segregation is necessary for the orderly administration of the public lands. To assess the potential economic impacts, the BLM must first make some assumptions concerning when and how often this segregation authority may be exercised. The purpose of any segregation would be to allow for the orderly administration of the public lands to facilitate the development of renewable energy resources by avoiding conflicts between renewable energy development and the location of mining claims.

Wind—Wind energy ROW site testing and development applications are widely scattered in many western states. Most of the public lands with pending wind energy ROW applications are currently managed for multiple resource use, including being open to mineral entry under the mining laws. Over the past 2 fiscal years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming. Based on the BLM's recent experience processing wind energy ROW applications, it is anticipated that approximately 25 percent of the lands with current wind energy ROW applications will reach the processing stage where a Notice of Intent (NOI) is issued. Without trying to identify specific locations of new mining claims located within those application areas, we assume a quarter

[6] "Significant regulatory action" means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy * * *; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs * * *; or (4) Raise novel legal and policy issues arising out of legal mandates, the President's priorities, or * * * this Executive Order." Exec. Order No. 12866, 58 FR 51738 (Oct. 4, 1993).

of those new mining claims, or 109 new mining claims, would be located within wind application areas that would be segregated under this rule.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically files and holds multiple mining claims. Of the 437 new mining claims filed within the wind energy ROW application areas in fiscal year (FY) 2009 and 2010, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number of claims and distribution of claims per claimant for FY 2009 and 2010, we estimate that 14 entities will be potentially precluded from filing new mining claims on lands that would be segregated within the identified wind energy ROW application areas under this rule. For these entities the economic impacts of the segregation are the delay in when they could locate their mining claims and a potential delay in the development of such claims because such development would be subject to any approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and commercial viability of any individual claim, and the fact that the location of a mining claim is an early step in a long process that may eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the segregation provision is if a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require the preparation of a mineral examination report to determine if the mining claims were valid before the lands were segregated before it processes the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report.

Within the past 2-year period, five Plans of Operations and two Notices were filed with the BLM within wind ROW application areas. Assuming (1) a quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is somewhat reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate two entities might be affected by this rule change.[7]

Should the BLM require the preparation of mineral examination reports to determine claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. Understanding that every mineral examination report is unique and the costs will vary accordingly, we assume an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the wind energy right-of-way application areas in FY 2009 and 2010, we estimate the total cost of this provision could be about $200,000 over the 2-year period.

Solar—As noted above, the primary purpose of any segregation under this Interim Rule would be to allow for the orderly administration of the public lands to facilitate the development of valuable renewable resources and to avoid conflicts between renewable energy generation and mining claim location. The main resource conflict of concern involves mining claims that are located after the first public announcement that the BLM is evaluating a ROW application, and prior to when the BLM issues a final decision on the ROW application.

Most of the public lands with pending solar energy ROW applications are currently managed for multiple resource use, including mineral entry under the mining laws. Where the BLM segregates lands from mineral entry, claimants would not be allowed to locate any new mining claims during the 2-year segregation period. Over the past 2 years, 216 new mining claims were located within solar energy ROW application areas. Based on the BLM's recent experience processing solar energy ROW applications, it is anticipated that approximately 25 percent of the lands with current solar energy ROW applications will reach the processing stage where a NOI is issued. Without trying to identify which ROWs will be granted or the specific locations of new mining claims within those application areas, we assume a quarter of those new mining claims, or 54 new mining claims, would be located within solar ROW application areas that would be segregated under this rule.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically locates and holds multiple mining claims. Of the 216 new mining claims located within solar energy ROW application areas in the past 2 years, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number and distribution of claims per claimant for the past 2 years, we estimate seven entities would be potentially precluded from locating new mining claims on lands segregated within the identified solar energy ROW application areas under the rule change. For these entities the economic impacts of the segregation are the delay in when they can locate their mining claim and a potential delay in the development of such claim because such development would be subject to any approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and commercial viability of any individual claim, and the fact that the location of a mining claim is an early step in a long process that may eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the segregation provisions is where a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require a mineral examination to determine if the mining claims were valid before the lands were segregated before it approves the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report.

Within the past 2-year period, two Plans of Operations and two Notices were filed with the BLM within solar ROW application areas. Assuming (1) a quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate one entity might be affected by this rule change.[8]

[7] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the Interim Rule, the BLM will separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a), whether to require a validity determination for such Plan and Notice.

[8] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the Interim Rule, the BLM will separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a),

Should the BLM require a mineral examination to determine claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. Understanding that every mineral examination report is unique and the costs will vary accordingly, we assume an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the solar energy ROW application areas in the past 2 years, we estimate the total cost of this provision could be about $100,000 over the 2-year period.

It is not possible to estimate the number of future rights-of-way for wind or solar energy developments that could be filed on areas identified as having potential for either of these sources of energy. This is because there are many variables that could have an impact on such filings. Such variables include: The quantity and sustainability of wind at any one site, the intensity and quantity of available sunlight, the capability of obtaining financing for either wind or solar energy projects, the proximity of transmission facilities that could be used to carry the power generated from a specific wind or solar energy ROW project, and the topography of the property involved. The number of mining claims would also be based on speculation as to the mineral potential of an area, access to markets, potential for profitability, and a host of other geologic factors, such as type of mineral, depth of the mineral beneath the surface, quantity and quality of the mineral, and other such considerations.

Based on this analysis, the BLM concludes that this Interim Rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This Interim Rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This Interim Rule does not alter the budgetary effects of entitlements, grants, user fees or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. The full economic analysis is available at the office listed under the **ADDRESSES** section of this preamble.

whether to require a validity determination for such Plan and Notice.

Clarity of the Regulation

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this Interim Rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the Interim Rule clearly stated?

2. Does the Interim Rule contain technical language or jargon that interferes with its clarity?

3. Does the format of the Interim Rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the Interim Rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the Interim Rule. How could this description be more helpful in making the Interim Rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has determined that this Interim Rule is administrative in nature and involves only procedural changes addressing segregation requirements. This Interim Rule will result in no new surface disturbing activities and therefore will have no effect on ecological or cultural resources. Potential effects from associated wind and/or solar ROWs will be analyzed as part of the site-specific NEPA analysis for those activities. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The Interim Rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Pursuant to Council on Environmental Quality regulation (40 CFR 1508.4) and the environmental policies and procedures of the Department, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. We anticipate that the Interim Rule could potentially affect a few entities that might otherwise have located new mining claims on public lands covered by a wind or solar energy facility ROW application currently pending or filed in the future. We further anticipate that most of these entities will be small entities as defined by the Small Business Administration; however, we do not expect the potential impact to be significant. Please see the Economic and Threshold Analysis at the address in the **ADDRESSES** section of this rule for additional information. Therefore, the BLM has determined under the RFA that this Interim Rule would not have a significant economic impact on a substantial number of small entities. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Small Business Regulatory Enforcement Fairness Act

For the same reasons as discussed under the Executive Order 12866, Regulatory Planning and Review section of this preamble, this Interim Rule is not a "major rule" as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Unfunded Mandates Reform Act

This Interim Rule does not impose an unfunded mandate on State, local, or tribal governments, in the aggregate, or the private sector of $100 million or more per year; nor does this Interim Rule have a significant or unique effect on State, local, or tribal governments. The rule imposes no requirements on any of these entities. This Interim Rule will not have effects approaching $100 million per year on the government or the private sector. Therefore, the BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This Interim Rule is not a government action that interferes with constitutionally protected property rights. This Interim Rule sets out a process, by publication of a notice in the **Federal Register**, that could be used to segregate public lands included within a pending or future solar or wind energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization. This segregation would remove public lands from the operation of the public land laws, including the location of new mining claims under the General Mining Law, but not the Mineral Leasing Act or the Materials Act, for a period of up to 2 years in order to promote the orderly administration of the public lands. Because any segregation under this Interim Rule would be subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department has determined that this Interim Rule does not have significant takings implications and does not require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This Interim Rule will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the levels of government. It does not apply to States or local governments or State or local government entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this Interim Rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this Interim Rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this Interim Rule does not include policies that have tribal implications. This rule applies exclusively to lands administered by the BLM. It is not applicable to and has no bearing on trust or Indian lands or resources, or on lands for which title is held in fee status by Indian tribes, or on U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing this Interim Rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this Interim Rule is not likely to have a significant adverse effect on energy supply, distribution, or use, including a shortfall in supply, price increase, or increased use of foreign supplies. The BLM's authority to segregate lands under this rulemaking would be of a temporary nature for the purpose of encouraging the orderly administration of public lands, including the generation of electricity from wind and solar resources on the public lands. Any increase in energy production as a result of this rule from wind or solar sources is not easily quantified, but the Interim Rule is expected to relieve obstacles and hindrances to energy development on public lands.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this Interim Rule does not impede the facilitation of cooperative conservation. The rule takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

The Interim Rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal author of this rule is Jeff Holdren, Realty Specialist, Division of Lands and Realty, assisted by the Division of Regulatory Affairs, Washington Office, Bureau of Land Management, Department of the Interior.

List of Subjects

43 CFR Part 2090

Airports; Alaska; Coal; Grazing lands; Indian lands; Public lands; Public lands—classification; Public lands—mineral resources; Public lands—withdrawal; Seashores.

43 CFR Part 2800

Communications; Electric power; Highways and roads; Penalties; Pipelines; Public lands—rights-of-way; Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authorities stated below, the BLM amends 43 CFR parts 2090 and 2800 as follows:

Subchapter B—Land Resource Management (2000)

PART 2090—SPECIAL LAWS AND RULES

■ 1. The authority citation for part 2090 continues to read as follows:

Authority: 43 U.S.C. 1740.

Subpart 2091—Segregation and Opening of Lands

■ 2. Amend § 2091.3–1 by adding a new paragraph (e) to read as follows:

§ 2091.3–1 Segregation.

* * * * *

(e)(1) The Bureau of Land Management may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included in a right-of-way application for the generation of electrical energy under 43 CFR subpart 2804 from wind or solar sources. In addition, the Bureau of Land

Management may also segregate lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources. Upon segregation, such lands will not be subject to appropriation under the public lands laws, including location under the General Mining Law, but not the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The Bureau of Land Management will effect such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the **Federal Register**, and the date of termination of the segregation is the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation.

(4) The effective period of this subsection of this part will not exceed two years from the date of its publication in the **Federal Register**.

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 3. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

Subpart 2804—Applying for FLPMA Grants

■ 4. Amend § 2804.25 by adding a new paragraph (e) to read as follows:

§ 2804.25 How will BLM process my application?

* * * * *

(e)(1) The BLM may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included within a right-of-way application under 43 CFR subpart 2804 for the generation of electricity from wind or solar sources. In addition, the BLM may also segregate public lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources under the BLM's right-of-way regulations. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the General Mining Law, but not from the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM will effect such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The segregative effect of the **Federal Register** notice terminates on the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation.

(4) The effective period of this subsection of this part will not exceed two years from the date of its publication in the **Federal Register**.

Dated: April 6, 2011.

Wilma A. Lewis,

Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. 2011–10019 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA360

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Reopening of the Commercial Sector for Vermilion Snapper in the South Atlantic

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the commercial sector for South Atlantic vermilion snapper in the exclusive economic zone (EEZ). NMFS previously determined the quota for the commercial sector would be reached by March 10, 2011, and closed the commercial sector for vermilion snapper in the South Atlantic. The latest estimates for landings indicate the quota was not reached by that date. Consequently, NMFS will reopen the commercial sector for 7 days. The purpose of this action is to allow the commercial sector to maximize harvest benefits and at the same time protect the vermilion snapper resource.

DATES: The reopening is effective 12:01 a.m., local time, May 1, 2011, until 12:01 a.m., local time, on May 8, 2011. The commercial sector will then be closed until the end of the current fishing period, 12:01 a.m., local time, July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (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.

The commercial quota for vermilion snapper in the South Atlantic is 315,523 lb (143,119 kg) for the current fishing period, January 1 through June 30, 2011, as specified in 50 CFR 622.42(e)(4)(i).

Under 50 CFR 622.43(a)(5), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the commercial sector for vermilion snapper in the South Atlantic would reach the quota on, or before, March 10, 2011, and closed the commercial sector on that date (76 FR 12883, March 9, 2011). However, based on current statistics, NMFS has determined that only 83 percent of the available commercial quota was landed by that date. Based on daily landings rates and the pounds remaining on the quota (approximately 53,120 lb (24,095 kg)), NMFS has determined the commercial sector can reopen for 7 days. Accordingly, NMFS is reopening the commercial sector for vermilion snapper in the South Atlantic from 12:01 a.m., local time, on May 1, 2011, until 12:01 a.m., local time, on May 8, 2011. The commercial sector will then be closed until 12:01 a.m., local time, July 1, 2011. May 1, 2011, was chosen as the reopening day for the commercial sector based on feedback from the fishing industry and expected weather conditions, which indicated that this was the best time to reopen.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper may not fish for or retain vermilion snapper in the South Atlantic prior to 12:01 a.m., local time, May 1, 2011, and must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, May 8, 2011.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, May 8, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the commercial sector. The 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). Allowing prior notice and opportunity for public comment on the reopening is unnecessary because the rule establishing the January 1 through June 30 quota has already been subject to notice and comment, and all that remains is to notify the public that additional harvest is available under the established quota and, therefore, the commercial sector will reopen for a limited time period.

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).

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

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

Dated: April 21, 2011.

James P. Burgess,

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

[FR Doc. 2011–10035 Filed 4–21–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101029427–0609–02]

RIN 0648–XA371

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2011 commercial summer flounder quota to the Commonwealth of Virginia. Vessels from North Carolina were authorized by Virginia to land summer flounder under safe harbor provisions, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective April 21, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Carly Knoell, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 471,727 lb (213,972 kg) of its 2011 commercial quota to Virginia. This transfer was prompted by 52 summer flounder landings of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling in Oregon Inlet, North Carolina, severe winter storm conditions, and/or mechanical problems between March 17, 2011, and April 1, 2011. This amount also includes a correction to a landing on March 16, 2011, that was included in the quota transfer effective April 4, 2011 (76 FR 19277). This correction accounts for 2,805 lb (1,272 kg) of the total transfer amount. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2011 are: North Carolina, 3,691,601 lb (1,674,482 kg); and Virginia, 4,780,967 lb (2,168,610 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: April 21, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–10036 Filed 4–21–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 80
Tuesday, April 26, 2011

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AI94

[NRC–2011–0058]

Alternative to Minimum Days Off Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations governing the fitness for duty of workers at nuclear power plants. These amendments would allow holders of nuclear power plant operating licenses the option to use a different method from the one currently prescribed in the NRC's regulations for determining when certain nuclear power plant workers must be afforded time off from work to ensure that such workers are not impaired due to cumulative fatigue caused by work schedules.

DATES: Submit comments by May 26, 2011. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. Requests for extension of the comment period will not be granted.

ADDRESSES: Please include Docket ID NRC–2011–0058 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments by any one of the following methods.

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0058. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand-deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (*telephone:* 301–415–1677).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Howard Benowitz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *telephone:* 301–415–4060; *e-mail: Howard.Benowitz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available information related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0058.

II. Background

A. NRC's Current Regulations

On March 31, 2008, the NRC adopted a final rule which substantially revised its regulations for fitness for duty (FFD) in Title 10 of the Code of Federal Regulations (10 CFR) part 26 (73 FR 16966; March 31, 2008). The revised regulations updated the NRC's FFD requirements and made them more consistent with other relevant Federal rules, guidelines, and drug and alcohol testing programs that impose similar requirements on the private sector. In addition, by establishing clear and enforceable requirements for the management of worker fatigue, the 2008

amendments require nuclear power plant licensees to ensure that worker fatigue does not adversely affect public health and safety and the common defense and security. Among these fatigue management requirements is a minimum days off requirement, which requires licensees to manage cumulative fatigue by providing workers with a minimum number of days off over the course of a period not to exceed 6 weeks.

B. Stakeholder Reaction to the Current Fitness for Duty Requirements

On September 3, 2010, the Nuclear Energy Institute (NEI) submitted a petition for rulemaking (PRM–26–5). In PRM–26–5, the NEI states that "the new rule has resulted in consequences not originally envisioned when the rule was developed and that these consequences have diminished the safety benefits of the rule." The NEI states that the unintended consequences stem from the minimum days off requirements, specifically § 26.205(d)(3) through § 26.205(d)(6), because they create an undue level of complexity and inflexibility in managing worker fatigue. These regulations mandate a specified minimum average number of days off per week, averaged over a fixed time period. The minimum average number of days off depends on the duties the individual performs and, for § 26.205(d)(3), the length of an individual's shift schedule (*i.e.,* whether the individual is working 8-, 10- or 12-hour shifts).

The NEI requests, among other changes, that 10 CFR part 26, Subpart I, be amended to replace the minimum days off requirements in § 26.205(d) with a performance-based objective, consisting of an average of 54 hours worked per week, averaged over a calendar quarter. The NEI also proposes changing the § 26.205(e)(1) annual assessment of actual hours worked and performance of individuals subject to the work hour controls to a quarterly assessment to provide a more frequent review of hours worked. The NEI proposes to eliminate the minimum days off requirements in § 26.205(d)(3) through § 26.205(d)(6), while the work hour limits and break requirements in § 26.205(d)(1)(i)–(iii) and (d)(2)(i)–(ii), respectively, would remain unchanged.

Separately from PRM–26–5, on September 23, 2010, the NEI submitted a request for enforcement discretion regarding the minimum days off provisions of part 26. The request reiterates the NEI's opinion that the regulations that govern fatigue management impede "many safety-beneficial practices at plant sites, adversely [impact] the quality of life of covered workers, and [result] in conflicts between rule requirements and represented bargaining unit agreements." The letter requests that the NRC "exercise enforcement discretion from the [minimum days off] provisions of the rule" until the final disposition of PRM–26–5.

Mr. Erik Erb, a nuclear security officer at the Nine Mile Point Nuclear Station, submitted a petition for rulemaking (PRM–26–6) on August 17, 2010. Mr. Erb requests that the NRC amend 10 CFR part 26, subpart I, to decrease the minimum days off requirement for security officers working 12-hour shifts from an average of 3 days per week to an average of 2.5 or 2 days per week. This petition was endorsed by 91 security officers.

C. Public Meetings and Commission Direction

The NRC held a public meeting on November 18, 2010, to learn, directly from the affected stakeholders, more details about the unintended consequences of the minimum days off requirements. Although some of the stakeholders are comfortable with the current minimum days off requirements, the stakeholders at this public meeting claimed that the unintended consequences have diminished the safety benefits of the fatigue management provisions of 10 CFR part 26 and expressed the need for an alternative that is simpler and would provide greater scheduling flexibility. Additional public meetings were held on January 6, 2011, and January 25, 2011, to provide opportunities for stakeholders and the NRC to discuss alternatives to the minimum days off requirements.

In a February 8, 2011, public meeting, the NRC staff and stakeholders briefed the Commission on the implementation of the 10 CFR part 26 fatigue management requirements. The nuclear power industry stakeholders conveyed many of the same concerns raised in the three public meetings. The NRC staff presented the scientific and technical bases for the current requirements for managing cumulative fatigue and a proposal to address the concerns raised by the industry stakeholders. The NRC staff proposed a maximum average 54-hour work week, averaged over a 6-week rolling period, as an alternative to the § 26.205(d)(3) minimum days off requirements. The NRC staff and industry stakeholders generally agreed that this proposal could provide the relief sought by the industry while meeting the objectives of the minimum days off requirements. Other stakeholders were less certain that the NRC should consider proposals to change the current requirements.

On March 24, 2011, the Commission issued a Staff Requirements Memorandum that directed the NRC staff to conduct a rulemaking to provide an alternative to the minimum days off requirements that would be consistent with the proposal presented by the NRC staff at the February 8, 2011, briefing. The Commission limited the scope of the rulemaking to the alternative to the minimum days off requirements and instructed the NRC staff to consider other issues related to the petitions for rulemaking, other changes to 10 CFR part 26, and comments received in this rulemaking proceeding that are outside the limited scope of this rulemaking, in a separate rulemaking effort. The Commission also directed the staff to expedite this rulemaking and provide a 30-day public comment period for this proposed rule instead of the typical 75-day public comment period.

III. Description of the Proposed Rule

A. Maximum Weekly Average of 54 Hours Worked Over a 6-Week Rolling Window

One cause of cumulative fatigue is consecutive days of restricted or poor quality sleep. In turn, consecutive days of restricted or poor quality sleep may be caused by such things as shift-work, extended work days, and extended work weeks. Currently, Subpart I of 10 CFR part 26 requires nuclear power plant licensees to manage cumulative fatigue primarily by providing individuals with a minimum number of days off over the course of a period not to exceed 6 weeks. The distribution of the days off during the 6-week period acts to either prevent or mitigate cumulative fatigue.

An alternative method for managing cumulative fatigue would be to establish a requirement to limit actual hours worked instead of mandating the number of days off that individuals receive. A limit on actual hours worked, when applied to schedules that require regular shift coverage, would limit the number of work hours that can contribute to cumulative fatigue and, as a practical matter, result in periodic days off for recovery rest. A schedule resulting in a weekly average of 54 hours worked, calculated using a rolling period of up to 6 weeks, would be such a schedule.

In general, most individuals that work their normal shift schedule and receive only the minimum number of days off required under the current minimum days off requirements of § 26.205(d)(3) could average as many as 54 hours of

work per week. However, the NEI has indicated that implementation of the minimum days off requirements has reduced licensee scheduling flexibility and imposed a substantial administrative burden. By comparison, limiting work hours to an average of not more than 54 hours per week by using a rolling window (*i.e.,* averaging period) of up to 6 weeks would limit the number of consecutive weeks of extended work hours that an individual can work by using a comparable but simpler and more flexible requirement. The 6 week limit would also remain consistent with the averaging duration and technical basis of the minimum days off requirements, as described in the Statement of Considerations (SOC) for the 2008 10 CFR part 26 final rule. In addition, this alternative would not depend on the length of an individual's shift schedule and would eliminate the burden of tracking the number of days off that an individual receives in a period not to exceed 6 weeks. Based on stakeholder input, the alternative would relieve operational burdens by enabling licensee personnel to engage in certain safety-beneficial practices with fewer scheduling restrictions, such as holding off-shift shift manager meetings and using the most knowledgeable workers in responding to plant events and conditions.

In summary, the maximum number of hours that could be worked under the proposed alternative approach would be comparable to the maximum number of hours that can be worked by most individuals under the current 10 CFR part 26 minimum days off requirements, except that the alternative requirement would provide for greater simplicity and flexibility. This proposed approach could be used only in place of the minimum days off requirements in § 26.205(d)(3) and would be applicable only to individuals subject to work hour controls under § 26.205(a). Under § 26.205(a), the subject individuals are those described in § 26.4(a). The NRC determination that the proposed alternative would be equivalent to the minimum days off requirements considered the collective advantages and disadvantages of having all individuals who are subject to the work hour controls under a single set of cumulative fatigue management requirements. Thus, licensees would not be able to subject one group of individuals under § 26.4(a) to the requirements in § 26.205(d)(3) and another group of individuals under § 26.4(a) to proposed § 26.205(d)(7) requirements. Allowing licensees to implement the minimum days off and proposed alternative requirements simultaneously would also create a burden for NRC oversight and inspections.

Although the rolling schedule required under the proposed alternative approach would limit the number of consecutive extended work weeks and thereby limit the potential for cumulative fatigue, there are unusual potential circumstances in which the proposed alternative requirement could be met and the schedule could be fatiguing. Such schedules include having only one in every nine days off or consistently working the maximum allowable hours, which would likely result in cumulative fatigue. However, the industry has stated that these unusual schedules are improbable. The NRC believes that this proposed alternative approach, together with other aspects of the rule that will remain unchanged, would provide reasonable assurance that licensees will manage cumulative fatigue in a manner that contributes to the protection of public health and safety and common defense and security.

B. Proposed Alternative to the Minimum Days Off Requirements

The NRC proposes to create a new § 26.205(d)(7) that would contain the proposed alternative. The proposed rule would allow nuclear power plant licensees and other entities identified in § 26.3(a) and, if applicable, (c) and (d) to choose whether or not to implement this alternative approach, in lieu of compliance with the current rule's minimum days off requirements in § 26.205(d)(3). The NRC is not proposing to remove the current § 26.205(d)(3) minimum days off requirements and mandate that all licensees instead adopt new maximum average work hour requirements. Some licensees may be satisfied with the current requirements. In addition, a mandated change would constitute backfitting under the NRC's Backfit Rule, 10 CFR 50.109. None of the exceptions in § 50.109(a)(4) to preparation of a backfit analysis could be justified, and a backfit analysis could not demonstrate that a mandatory rule would constitute a cost-justified substantial increase in protection to public health and safety or common defense and security. For these reasons, the NRC has decided to propose the maximum weekly average of 54 work hours, averaged over a rolling window of up to 6 weeks, as an alternative to the minimum days off requirements.

C. Applicability

Consistent with the current rule's minimum days off requirements in § 26.205(d)(3), the proposed alternative maximum average work hours provisions would apply to all periods of operations, with several specified exceptions: during force-on-force exercises and plant emergencies and for security personnel when they are needed to maintain the common defense and security. In those limited circumstances, special provisions, described below, would apply. In addition, licensees currently have the option under § 26.205(d)(4) to comply with the minimum days off requirements in either § 26.205(d)(3) or § 26.205(d)(4) during unit outages when the affected individuals are working on outage activities, and have the option under § 26.205(d)(5) to comply with the minimum days off requirements in either § 26.205(d)(3) or § 26.205(d)(5) during unit outages, security system outages, or increased threat conditions. Under the proposed rule, licensees also would have the option to comply with the maximum average work hours requirements under the above conditions. The reasons that the Commission permits the exceptions and options involving the minimum days off requirements are explained in the SOC for the 2008 10 CFR part 26 final rule. Because the proposed optional approach would offer licensees an equivalent minimum days off alternative that is equally effective at managing cumulative fatigue, the 2008 10 CFR part 26 final rule SOC also provides the justification for why the proposed alternative would apply to the exceptions and options described herein.

The current rule, in § 26.205(d)(4), offers licensees the option to apply different minimum days off requirements during the first 60 days of a unit outage for individuals working on outage activities. During this part of outages, licensees are not required to calculate the requisite number of an individual's days off by a weekly average over a period of up to 6 weeks. The regulation requires licensees who choose the outage option to provide affected individuals with a fixed number of days off over a 15-day period or 7-day period, depending on the duties performed by the individuals. Similarly, the cumulative fatigue management provisions for security personnel in current § 26.205(d)(5)(i) allow licensees, during the first 60 days of a unit outage or a planned security system outage, the option to comply with the minimum days off

requirements in § 26.205(d)(3) or provide security personnel with a fixed number of days off over a 15-day period. Under proposed § 26.205(d)(4) and (d)(5)(i), licensees that choose the alternative maximum average work hours approach during non-outage periods would have the option to use the proposed alternative or the fixed number of days off approaches during the first 60 days of outages.

During the first 60 days of an unplanned security system outage or increased threat condition, current § 26.205(d)(5)(ii) provides a discretionary exception from the minimum days off requirement in § 26.205(d)(3) and (d)(5)(i) so that security personnel subject to the work hour requirements would not be required to meet the minimum days off requirements. The proposed § 26.205(d)(5)(ii) would permit licensees who implement the maximum average work hours approach during non-outage periods to not meet the proposed § 26.205(d)(7) requirements during the first 60 days of an unplanned security system outage or increased threat condition.

Section 26.207(b) of the current regulations relieves licensees from the minimum days off requirements of § 26.205(d)(3) by allowing licensees to exclude shifts worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises when calculating the individuals' required number of days off. The proposed rule would permit licensees who implement the proposed alternative during non-outage periods to exclude from the proposed § 26.205(d)(7) calculations the hours worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises.

Current § 26.207(c) provides a licensee relief from the work hour control requirements of § 26.205 for security personnel upon written notification from the NRC, for the purpose of assuring the common defense and security for a period the NRC defines. In the proposed rule, licensees would also be relieved from the requirements of proposed § 26.205(d)(7) in this situation.

As stated in current § 26.207(d), a licensee need not meet the work hour controls, including the minimum days off requirements, during declared emergencies, as defined in the licensee's emergency plan. Under the proposed rule, consistent with the current approach for minimum days off requirements during declared emergencies, licensees would not need to meet the requirements of the proposed § 26.205(d)(7) during the period of the declared emergency.

The NRC Office of Enforcement issued EGM–09–008, "Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration," dated September 24, 2009, to give the NRC staff guidance for processing violations of work hour controls requirements during conditions before and immediately after the declaration of an emergency for a hurricane, when licensees sequester plant staff on site to ensure personnel are available for relief of duties, and potentially granting enforcement discretion for the affected requirements. Under EGM–09–008, the NRC may exercise enforcement discretion and not cite licensees for violations of 10 CFR 26.205(c) and (d) while a licensee sequesters site personnel in preparation for hurricane conditions that are expected to result in the declaration of an emergency caused by high winds. The EGM refers to § 26.205(d) generally, and therefore, the requirements in proposed § 26.205(d)(7) would also fall under the enforcement discretion described by EGM–09–008.

IV. Section-by-Section Analysis

10 CFR 26.203 General Provisions.

Section 26.203 establishes requirements for licensees' fatigue management policies, procedures, training, examinations, recordkeeping, and reporting. The NRC proposes to make conforming changes to paragraphs within § 26.203 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in proposed § 26.205(d)(7).

Section 26.203(d)(2)

Section 26.203(d)(2) currently requires licensees to retain records of shift schedules and shift cycles of individuals who are subject to the work hour requirements established in § 26.205. These records are necessary, in part, to ensure that documentation of the licensee's fatigue management program is retained and available for the NRC inspectors to verify that licensees are complying with the work hour requirements and waiver and fatigue assessment provisions. Because licensees that implement the alternative would need to show inspectors that individuals subject to the new work hour controls have not exceeded the average weekly work hour limit, inspectors would need to know the averaging periods used by the licensee. Therefore, the NRC proposes to amend § 26.203(d)(2) to include the requirement that licensees implementing the requirements in proposed § 26.205(d)(7) maintain records showing the beginning and end times and dates of all 6-week or shorter averaging periods. These licensees would also need to retain records of shift schedules to ensure compliance with the requirements in § 26.205(c) and § 26.205(d)(2).

Section 26.203(e)(1)

Current § 26.203(e)(1) requires licensees to provide the NRC with an annual summary of all instances during the previous calendar year in which the licensee waived each of the work hour controls specified in § 26.205(d)(1) through (d)(5)(i) for individuals who perform the duties listed in § 26.4(a)(1) through (a)(5). Section 26.203(e)(1) would be revised in the proposed rule to require licensees to also report the instances when the licensee waived the requirements in proposed § 26.205(d)(7).

Section 26.203(e)(1)(i) and (e)(1)(ii)

Section 26.203(e)(1)(i) and (e)(1)(ii) requires licensees to report whether work hour controls are waived for individuals working on normal plant operations or working on outage activities. The proposed rule would require licensees to include whether the alternative requirements in proposed § 26.205(d)(7) were waived during normal plant operations or while working on outage activities.

10 CFR 26.205 Work hours.

Section 26.205 sets forth the NRC's requirements governing work hour controls applicable to individuals performing the duties in 10 CFR 26.4(a)(1) through (a)(5). The NRC proposes to add a new § 26.205(d)(7) and make conforming changes to existing paragraphs within § 26.205 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average work hours requirements in proposed § 26.205(d)(7).

Section 26.205(b)(5)

Section 26.205(b)(5) currently allows licensees to exclude from the calculation of an individual's work hours unscheduled work performed off site (*e.g.,* technical assistance provided by telephone from an individual's home), provided the total duration of the work does not exceed a nominal 30 minutes during any single break period. For the purposes of compliance with the

minimum break requirements of § 26.205(d)(2) and the minimum days off requirements of § 26.205(d)(3) through (d)(5), such duties do not constitute work periods or work shifts. The proposed rule would revise § 26.205(b)(5) to exclude these incidental duties from hours worked under proposed § 26.205(d)(7).

Section 26.205(d)(3)

Currently, § 26.205(d)(3) requires licensees to ensure that subject individuals have, at minimum, the days off as specified in this section. Under the proposed rule, licensees would have the option of either complying with the minimum days off requirements in § 26.205(d)(3) or the alternative requirements in proposed § 26.205(d)(7).

Section 26.205(d)(4)

Current § 26.205(d)(4) provides a limited discretionary exception from the minimum day off requirements in § 26.205(d)(3) for individuals performing the duties specified in § 26.4(a)(1) through (a)(4) (*i.e.,* certain operations, chemistry, health physics, fire brigade, and maintenance activities). The exception from the minimum days off requirements is available during the first 60 days of a unit outage while a subject individual is working on outage activities. In these circumstances, if the licensee elects to apply the exception, § 26.205(d)(4) requires licensees to ensure that individuals specified in § 26.4(a)(1) through (a)(3) have a minimum of 3 days off in each successive (*i.e.,* non-rolling) 15-day period and that individuals specified in § 26.4(a)(4) have at least 1 day off in any 7-day period. Detailed guidance on the applicability of this rule provision is available in Regulatory Guide 5.73, "Fatigue Management for Nuclear Power Plant Personnel." After the first 60 days of a unit outage, regardless of whether the individual is working on unit outage activities, the individual is again subject to the minimum days off requirements of § 26.205(d)(3), except as permitted by § 26.205(d)(6). The NRC proposes to revise § 26.205(d)(4) to allow licensees that choose the maximum average work hours alternative during non-outage periods to have the option to use the proposed alternative or the fixed number of days off approach during the first 60 days of a unit outage.

Section 26.205(d)(5)(i)

Section 26.205(d)(5)(i) currently provides a discretionary exception from the minimum days off requirements of § 26.205(d)(3) for personnel performing the duties described in § 26.4(a)(5) during unit outages or unplanned security system outages. The requirement limits this exception period to 60 days from the beginning of the outage and requires that individuals performing the security duties identified in § 26.4(a)(5) during this period have a minimum of 4 days off in each non-rolling 15-day period. Proposed § 26.205(d)(5)(i) would allow licensees that choose the maximum average work hours alternative during non-outage periods to have the option to use the proposed alternative or the fixed number of days off approach in § 26.205(d)(5)(i) for security personnel during the first 60 days of a unit outage or unplanned security system outage.

Section 26.205(d)(5)(ii)

Current § 26.205(d)(5)(ii) provides a discretionary exception from the minimum days off requirements of § 26.205(d)(3) for security personnel during the first 60 days of an unplanned security system outage or an increased threat condition. Individuals performing the security duties identified in § 26.4(a)(5) during this period do not have to meet the minimum days off requirements of § 26.205(d)(3). Proposed § 26.205(d)(5)(ii) would provide that, during the first 60 days of an unplanned security system outage or an increased threat condition, licensees would not need to meet the requirements of § 26.205(d)(3), § 26.205(d)(5)(i), or proposed § 26.205(d)(7) for security personnel.

Section 26.205(d)(7)

This would be a new section governing maximum average work hours for subject individuals, with which licensees could voluntarily choose to comply as an alternative to complying with comparable provisions in § 26.205(d)(3). Licensees who choose to comply with this alternative would nonetheless comply with all requirements in § 26.205 other than the minimum days off requirements in § 26.205(d)(3).

The individuals subject to the proposed maximum average work hours requirements in this section would be the same as the individuals subject to the comparable controls in § 26.205(d)(3), which, according to § 26.205(a), are the individuals described in § 26.4(a). Unlike the minimum days off requirements, the proposed maximum average work hours alternative would apply to all individuals described in § 26.205(a) without regard for their assigned duties or the length of their shift schedules.

Section 26.205(d)(7)(i)

Licensees who elect to implement the requirements of proposed § 26.205(d)(7)(i) would manage affected individuals' cumulative fatigue by limiting the number of hours they work each week to an average of 54 hours. The 54-hour average would be computed over a rolling period of up to 6 weeks. Licensees would roll (*i.e.,* adjust forward) the beginning and end times and dates of their averaging periods (of up to 6 weeks) by no more than 7 consecutive calendar days at any time. Licensees would be expected to describe in their FFD procedures, as required by proposed § 26.205(d)(7)(ii), the beginning and end times and days of the week for the averaging periods.

Section 26.205(d)(7)(ii)

In proposed § 26.205(d)(7)(ii), each licensee would need to explicitly state, in its FFD policies and procedures required by 10 CFR 26.27 and 10 CFR 26.203, with which requirements it is complying: The minimum days off provisions in § 26.205(d)(3) or the maximum average work hours requirements in proposed § 26.205(d)(7). As a general matter, good regulatory practice requires each licensee to clearly document its licensing basis, especially where the NRC's requirements offer the licensee one or more regulatory alternatives. If a licensee clearly and sufficiently documents its licensing basis, then the licensee can more easily determine, despite changes (as applicable) in personnel, procedures, or its design, whether the licensee continues to comply with its licensing basis and applicable NRC requirements. Effective documentation also allows the NRC to quickly and accurately determine the licensee's status of compliance and affords the public an opportunity to understand the legal constraints to which that licensee is subject.

Arguably, the NRC's regulations would already require the licensee to document its decision to comply with the alternative to the minimum days off requirements in proposed § 26.205(d)(7). Section 26.27 requires licensees to establish written FFD policies and procedures, and 10 CFR 26.203(a) and (b) requires licensees to include in the § 26.27 written policies and procedures the specific policies and procedures for the management of fatigue, including the process for implementing the work hour controls in § 26.205. However, to avoid ambiguity on this matter, the NRC would make clear in § 26.205(d)(7)(ii) the licensee's (and applicant's) regulatory obligation to document in its

FFD policies and procedures, required by § 26.27 and § 26.203(a) and (b), including the process for implementing the work hour controls, with which requirements it will comply: The requirements in § 26.205(d)(3) or proposed § 26.205(d)(7).

The cumulative fatigue management requirements with which each licensee elects to comply, either the requirements in § 26.205(d)(3) or proposed § 26.205(d)(7), would be the legally-binding requirements for that licensee for all individuals subject to the work hour controls of § 26.205. For example, licensees would not be able to subject one group of individuals under § 26.4(a) to the requirements in § 26.205(d)(3) and another group of individuals under § 26.4(a) to proposed § 26.205(d)(7) requirements. Implementing the minimum days off and proposed alternative requirements simultaneously would create a burden for NRC inspectors because before they could even begin their inspection review, the inspectors would have to ascertain which groups of individuals were subject to which set of requirements. The review itself would then be more burdensome because the review would include additional steps depending on the applicable individuals and requirements. In addition, the NRC assessed the proposed alternative as equivalent to the minimum days off requirements considering the collective advantages and disadvantages of having all individuals who are subject to the work hour controls under a single set of cumulative fatigue management requirements. Nevertheless, licensees would be free to switch to the other set of legally-binding requirements, so long as the requirement of proposed § 26.205(d)(7)(ii) was met.

Section 26.205(e)(1)(i)

Currently, § 26.205(e)(1) requires licensees to review the actual work hours and performance of individuals who are subject to this section for consistency with the requirements of § 26.205(c), so that licensees can determine if they are controlling the work hours of individuals consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts. Section 26.205(e)(1)(i) requires the licensees to assess the actual work hours and performance of individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any shift cycle while the individuals' work hours are subject to the requirements of § 26.205(d)(3). The NRC proposes to amend § 26.205(e)(1)(i) to require licensees to assess the actual work hours and performance of individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any averaging period of up to 6 weeks. The duration of the averaging periods would be the same duration that the licensees use to control the individuals' work hours to comply with the requirements of proposed § 26.205(d)(7).

10 CFR 26.207 Waivers and Exceptions

Section 26.207 provides the criteria that licensees must meet to authorize waivers and enact exceptions from the work hour requirements in § 26.205(d)(1) through (d)(5)(i). The NRC proposes to make conforming changes to paragraphs within § 26.207 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average hours worked requirements in proposed § 26.205(d)(7).

Section 26.207(a)

Section 26.207(a) permits licensees to authorize waivers from the work hour requirements in § 26.205(d)(1) through (d)(5)(i) for conditions that meet the two criteria specified in § 26.207(a). Section 26.207(a) would be revised in the proposed rule to authorize licensees to grant waivers from the work hour requirements in proposed § 26.205(d)(7) if the criteria in § 26.207(a) are met.

Section 26.207(b)

Current § 26.207(b) relieves licensees from the minimum days off requirements of § 26.205(d)(3) by allowing them to exclude shifts worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises when calculating the individual's number of days off. The proposed rule would amend § 26.207(b) to permit licensees to exclude from the maximum average work hours requirements of proposed § 26.205(d)(7) the hours worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises.

10 CFR 26.209 Self-Declarations

Section 26.209 requires licensees to take immediate action in response to a self-declaration by an individual who is working under, or being considered for, a waiver from the work hour controls in § 26.205(d)(1) through (d)(5)(i). The NRC proposes to make a conforming change to § 26.209(a) to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average hours worked requirements in proposed § 26.205(d)(7).

Section 26.209(a)

Section 26.209(a) would be amended in the proposed rule to address the situation when an individual is performing, or being assessed for, work under a waiver of the requirements contained in proposed § 26.205(d)(7) and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties. As in the current § 26.209(a), the licensee shall immediately stop the individual from performing any duties listed in § 26.4(a), except if the individual is required to continue performing those duties under other requirements in 10 CFR part 26. If the subject individual must continue performing the duties listed in § 26.4(a) until relieved, then the licensee shall immediately take action to relieve the individual.

10 CFR 26.211 Fatigue Assessments

Section 26.211 currently requires licensees to conduct fatigue assessments under several conditions. The NRC proposes to make conforming changes to paragraphs within § 26.211 to ensure consistency between the implementation of the minimum days off requirements in § 26.205(d)(3) and the implementation of the maximum average hours worked requirements in proposed § 26.205(d)(7).

Section 26.211(b)(2)(iii)

Section 26.211(b)(2)(iii) prohibits individuals from performing a post-event fatigue assessment if they evaluated or approved a waiver of the limits specified in § 26.205(d)(1) through (d)(5)(i) for any of the individuals who were performing or directing the work activities during which the event occurred if the event occurred while such individuals were performing work under that waiver. The proposed rule would amend § 26.211(b)(2)(iii) to prohibit individuals from performing a post-event fatigue assessment if they evaluated or approved a waiver of the limits specified in proposed § 26.205(d)(7) for any of the individuals who were performing or directing the work activities during which the event occurred if the event occurred while such individuals were performing work under that waiver.

Section 26.211(d)

Current § 26.211(d) prohibits licensees from concluding that fatigue has not degraded or will not degrade the individual's ability to safely and

competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in § 26.205(d)(1) or that the individual has had the minimum rest breaks required in § 26.205(d)(2) or the minimum days off required in § 26.205(d)(3) through (d)(5). The NRC proposes to amend § 26.211(d) to include the maximum average work hours among the criteria that licensees may not solely rely on when concluding that fatigue has not degraded or will not degrade an individual's ability to safely and competently perform his or her duties.

V. Specific Request for Comment

The NRC is seeking advice and recommendations from the public on this proposed rule. The NRC will consider all comments received within the limited scope of this proposed rulemaking and address them in the final rule. We are particularly interested in comments and supporting rationale from the public on the following issue: Would the alternative approach provide comparable assurance of the management of cumulative fatigue as the current minimum days off requirements?

VI. Availability of Documents

The following table lists documents that are related to this proposed rule and available to the public and indicates how they may be obtained. See Submitting Comments and Accessing Information of the **SUPPLEMENTARY INFORMATION** section on the physical locations and Web sites where the documents may be accessed.

Document	PDR	Web	Electronic Reading Room (Adams)
U.S. Nuclear Regulatory Commission, Regulatory Guide 5.73, "Fatigue Management For Nuclear Power Plant Personnel" (March 2009).	X	.....	ML083450028
PRM–26–5, Petition to Amend 10 CFR part 26, "Fitness-for-Duty Programs," filed by the Nuclear Energy Institute (September 3, 2010).	X	Docket ID. NRC–2010–0304	ML102590440
Anthony R. Pietrangelo on Behalf of the Nuclear Energy Institute; Notice of Receipt of Petition for Rulemaking, 75 FR 65249 (October 22, 2010).	.....	Docket ID. NRC–2010–0304.	
Request for Enforcement Discretion filed by the Nuclear Energy Institute (September 23, 2010).	X	.....	ML102710208
PRM–26–6, Petition to Amend 10 CFR part 26, filed by Eric Erb (August 17, 2010).	X	Docket ID. NRC–2010–0310	ML102630127
Eric Erb; Notice of Receipt of Petition for Rulemaking, 75 FR 71368 (November 23, 2010).	.....	Docket ID. NRC–2010–0310.	
SECY–11–0003, Status of Enforcement Discretion Request and Rulemaking Activities Related to 10 CFR part 26, Subpart I, "Managing Fatigue" (January 4, 2011).	X	.....	ML103420201
SECY–11–0028, Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off Provisions of 10 CFR part 26, Subpart I, "Managing Fatigue" (February 28, 2011).	X	.....	ML110390077
EGM–09–008, "Enforcement Guidance Memorandum—Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration" (September 24, 2009).	X	.....	ML092380177
Staff Requirements—SECY–11–0003—Status of Enforcement Discretion Request and Rulemaking Activities Related to 10 CFR part 26, Subpart I, "Managing Fatigue" and SECY–11–0028—Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off Provisions of 10 CFR part 26, Subpart I, "Managing Fatigue" (March 24, 2011).	X	.....	ML110830971
Updated Notice of Public Meeting to Discuss part 26, Subpart I Implementation to Understand Unintended Consequences of the Minimum Day Off Requirements (November 15, 2010).	X	.....	ML103160388
Summary of November 18, 2010, Public Meeting to Discuss part 26, Subpart I Implementation to Understand Unintended Consequences of the Minimum Day Off Requirements (December 13, 2010).	X	.....	ML103430557
Update—Notice of Public Meeting Regarding part 26, Subpart I Minimum Days Off Requirements and Options Licensees May Implement to Receive Enforcement Discretion From These Requirements (December 30, 2010).	X	.....	ML103550089
Summary of January 6, 2011, Public Meeting Regarding part 26, Subpart I Minimum Days Off Requirements and Options Licensees May Implement to Receive Enforcement Discretion from these Requirements (February 3, 2011).	X	.....	ML110280446
Notice of Public Meeting to Discuss Alternatives to the part 26, Subpart I, Minimum Days Off Requirements (January 14, 2011).	X	.....	ML110140315
Summary of January 25, 2011, Public Meeting to Discuss Alternatives to the part 26, Subpart I, Minimum Days Off Requirements.	X	.....	ML110340512
Sunshine Federal Register Notice of February 8, 2011, Commission Briefing on the Implementation of part 26, 76 FR 5626 (February 1, 2011).	X	.....	ML110200295
Transcript of February 8, 2011, Commission Briefing on the Implementation of part 26.	X	.....	ML110410169

VII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), as amended, the NRC is issuing this proposed rule that would amend 10 CFR part 26 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR part 26 are discussed in § 26.825.

VIII. Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this proposed rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with a particular State's administrative procedure laws but does not confer regulatory authority on the State.

IX. Plain Language

The Plain Writing Act of 2010 (Pub. L. 11 1–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the Act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document, including the proposed amended and new rule language, to be consistent with the Plain Writing Act. In addition, where existing rule language must be changed, the NRC has rewritten that language to improve its organization and readability. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this document.

X. Voluntary Consensus Standards

The NRC proposes using this standard instead of the following voluntary consensus standard developed by the American Nuclear Society (ANS): American National Standards Institute (ANSI)/ANS–3.2–1988. The NRC has determined that using a Government-unique standard would be justified. The NRC declined to use the ANS standard when the fatigue management provisions in Subpart I of 10 CFR part 26 were adopted in 2008. (73 FR 16966; March 31, 2008, at 17170 (second and third column)). The alternative for managing cumulative fatigue through a maximum average work hours requirement in this proposed rule has no counterpart in ANSI/ANS–3.2–1988 that could be adopted to manage cumulative fatigue, and the NRC declines to reconsider its overall decision in the 2008 rulemaking not to adopt the fatigue management approach embodied in the ANS standard. Accordingly, the NRC concludes that there are no voluntary consensus standards that could be adopted in lieu of the proposal to adopt the Government-unique standard in this proposed rule.

XI. Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This proposed rule would allow licensees of nuclear power reactors to voluntarily use a different method from the one currently prescribed in the NRC's regulations for determining whether certain nuclear power plant workers must be afforded time off from work.

The NRC has determined that the alternative for determining time off would not significantly alter the likelihood that there will be an increase in fatigued workers causing operational problems or a radiological event, or being unable to properly perform their functions. The alternative would provide affected licensees with a more-easily implemented approach for determining when subject individuals must be afforded the time off. The NRC recognizes that there are unusual potential circumstances in which the proposed alternative requirement could be met and the schedule could be fatiguing. Such schedules include having only one in every nine days off or consistently working the maximum allowable hours, which would likely result in cumulative fatigue. However, the industry has stated that these unusual schedules are improbable. The NRC believes that this proposed alternative approach, together with other aspects of the rule that will remain unchanged, would provide reasonable assurance that licensees will manage cumulative fatigue in a manner that contributes to the protection of public health and safety and common defense and security. In addition, the proposed alternative is expected to reduce scheduling constraints on certain safety-beneficial practices. Because the NRC's regulatory objective would continue to be met under the alternative adopted in this proposed rule, there should be no change in environmental impacts, during operation or while the nuclear power plant is in shutdown, as compared with the environmental impact of the current rule.

The primary alternative to this action would be the no-action alternative. The no-action alternative could result in a greater administrative burden on nuclear power plant licensees in complying with the minimum days off requirements in the current rule, as compared with the alternative to the minimum days off requirements under the proposed rule. In addition, individuals subject to minimum days off requirements could personally believe that their quality of life and work conditions are less under the no-action alternative, as compared with the alternative maximum average work hours requirements that could be selected under the proposed rule.

The no-action alternative would provide little or no environmental benefit. In addition, the no-action alternative has led nuclear power plant licensees to use work scheduling approaches that, for example, reduce their capability to use the most knowledgeable workers in responding to plant events and conditions. This may provide less safety and greater risk as compared with the less burdensome scheduling approaches that licensees would be allowed to use under the alternative to the minimum days off requirements under the proposed rule.

For these reasons, the NRC concludes that this rulemaking would not have a significant adverse impact on the environment. This discussion constitutes the environmental assessment for this proposed rule. However, public stakeholders should note that the NRC is seeking public participation. Comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** section.

XII. Paperwork Reduction Act Statement

The public burden for this information collection is estimated to be 257 hours, which is insignificant. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB Control Number 3150–0146.

Abstract

This proposed rule would allow holders of nuclear power plant

operating licenses the option to use a different method than the one currently prescribed in the NRC's regulations for determining when certain nuclear power plant workers must be afforded time off from work to ensure that such workers are not impaired due to cumulative fatigue caused by work schedules. Licensees using the alternative method would calculate the number of hours worked by applicable individuals, with a per-person limit of a maximum weekly average of 54 hours worked over a 6-week rolling window. Burden would not increase for ongoing requirements, such as scheduling work hours, recording calculations of work hours, or recording and trending problems regarding work hours. Licensees choosing to use the alternate method would incur a one-time implementation burden to revise FFD procedures, modify their work hour tracking systems and individual work scheduling systems, and state in their FFD policies which method of fatigue management is being used.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

The public may examine and have copied, for a fee, publicly available documents, including the NRC Form 670, "Information Required for Making an Insignificant Burden Determination To Support a Decision That OMB Clearance Is Not Required," at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The NRC Form 670 and proposed rule are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doccomment/omb/index.html* for 30 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by May 26, 2011, to the Information Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *Infocollects.Resource@nrc.gov;* and to Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0146), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *Christine_J._Kymn@omb.eop.gov* or comment by telephone at 202–395–4638.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis

The NRC has not prepared a full regulatory analysis for this proposed rulemaking. The NRC has determined that the proposed maximum average work hours requirement would provide reasonable assurance that subject individuals are not impaired due to cumulative fatigue caused by excessive work hours. As such, adequate implementation of the alternative approach would maintain reasonable assurance that persons subject to work hour controls can safely and competently perform their assigned duties and therefore meets the intent of the current minimum days off requirement. The 2008 10 CFR part 26 final rule contained a regulatory analysis to support the minimum days off requirement. Because the proposed approach would offer licensees an alternative that is generally equivalent to the current minimum days off requirements in managing cumulative fatigue, the 2008 final rule regulatory analysis also supports this proposed rule.

Furthermore, both nuclear power plant licensees and individuals subject to the NRC's existing requirements in 10 CFR 26.205(d)(3) governing minimum days off would derive substantial benefits if the NRC were to adopt an alternative approach for controlling cumulative fatigue through maximum average work hours that could be voluntarily adopted by those licensees. In addition, the NRC concludes that providing an alternative would maintain the ability of those licensees to continue using scheduling practices that have a positive safety benefit. The NRC's conclusions in this regard are based upon information presented by two petitioners for rulemaking seeking changes to the work hour controls in 10 CFR 26.205, NEI's request for enforcement discretion of those same regulatory provisions in 10 CFR 26.205, evidence gathered from stakeholders at the three public meetings, and analysis performed by the NRC staff and explained in a January 4, 2011, memorandum and a February 28, 2011, memorandum to the Commission. In these memoranda, the NRC staff documented its evaluation of the options available to the Commission to address the concerns raised in the petitions for rulemaking and request for enforcement discretion. At the February 8, 2011, Commission briefing on the implementation of 10 CFR part 26, stakeholders appeared to support the use of an expedited rulemaking process to address the issues presented by the industry. In view of all of this information, the NRC did not see any value in preparing a more detailed regulatory analysis for this proposed rule. The NRC requests public comment on this draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** section of this document.

XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only licensees that do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XV. Backfitting

The NRC has determined that the Backfit Rule, 10 CFR 50.109, would not apply to this proposed rule, nor would the proposed rule be inconsistent with any of the finality provisions in 10 CFR part 52. The proposed rule, in 10 CFR 26.205(d)(7), would provide nuclear power plant licensees with an alternative for compliance with the existing controls in 10 CFR 26.205(d)(3) governing minimum days off for certain nuclear power plant workers. Licensees would be free to comply with either the existing rule's requirements governing minimum days off or with the proposed alternative requirements in 10 CFR 26.205(d)(7). The NRC concludes that a backfit analysis would not be required for this proposed rule because this proposed rule would not contain any provisions that constitute backfitting.

The proposed rule would not be inconsistent with any finality provisions

in 10 CFR part 52. No standard design certification rule or standard design approval issued under 10 CFR part 52, or currently being considered by the NRC, addresses fitness-for-duty requirements in 10 CFR part 26. Accordingly, there are no issues resolved in those design certification rules or design approvals that would be within the scope of the minimum days off controls in this proposed rule. In addition, the NRC has not issued any combined licenses under 10 CFR part 52. Hence, there are currently no holders of combined licenses who would be protected by applicable issue finality provisions. The NRC concludes that this proposed rule would not contain any provisions that would be inconsistent with any of the finality provisions in 10 CFR part 52.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 26.203 is amended by revising paragraphs (d)(2), (e)(1) introductory text, (e)(1)(i), and (e)(1)(ii) to read as follows:

§ 26.203 General provisions.

* * * * *

(d) * * *

(2) For licensees implementing the requirements of § 26.205(d)(3), records of shift schedules and shift cycles, or, for licensees implementing the requirements of § 26.205(d)(7), records of shift schedules and records showing the beginning and end times and dates of all averaging periods, of individuals who are subject to the work hour controls in § 26.205;

* * * * *

(e) * * *

(1) A summary for each nuclear power plant site of all instances during the previous calendar year when the licensee waived one or more of the work hour controls specified in § 26.205(d)(1) through (d)(5)(i) and (d)(7) for individuals described in § 26.4(a). The summary must include only those waivers under which work was performed. If it was necessary to waive more than one work hour control during any single extended work period, the summary of instances must include each of the work hour controls that were waived during the period. For each category of individuals specified in § 26.4(a), the licensee shall report:

(i) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (d)(1)(iii), (d)(2)(i) and (d)(2)(ii), (d)(3)(i) through (d)(3)(v), and (d)(7) was waived for individuals not working on outage activities;

(ii) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (d)(1)(iii), (d)(2)(i) and (d)(2)(ii), (d)(3)(i) through (d)(3)(v), (d)(4) and (d)(5)(i), and (d)(7) was waived for individuals working on outage activities; and

* * * * *

3. Section 26.205 is amended by revising paragraphs (b)(5), (d)(4), (d)(5)(i), (d)(5)(ii), and (e)(1)(i) and the introductory text of paragraph (d)(3), and adding a new paragraph (d)(7) to read as follows:

§ 26.205 Work hours.

* * * * *

(b) * * *

(5) Incidental duties performed off site. Licensees may exclude from the calculation of an individual's work hours unscheduled work performed off site (*e.g.,* technical assistance provided by telephone from an individual's home), provided the total duration of the work does not exceed a nominal 30 minutes during any single break period. For the purposes of compliance with the minimum break requirements of § 26.205(d)(2), and the minimum days off requirements of § 26.205(d)(3) through (d)(5) or the maximum average work hours requirements of § 26.205(d)(7), such duties do not constitute work periods, work shifts, or hours worked.

* * * * *

(d) * * *

(3) Licensees shall either ensure that individuals have, at a minimum, the number of days off specified in this paragraph, or comply with the requirements for maximum average work hours in § 26.205(d)(7). For the purposes of this section, a day off is defined as a calendar day during which an individual does not start a work shift. For the purposes of calculating the average number of days off required in this paragraph, the duration of the shift cycle may not exceed 6 weeks.

* * * * *

(4) During the first 60 days of a unit outage, licensees need not meet the requirements of § 26.205(d)(3) or (d)(7) for individuals specified in § 26.4(a)(1) through (a)(4), while those individuals are working on outage activities. However, the licensee shall ensure that the individuals specified in § 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (*i.e.,* non-rolling) 15-day period and that the individuals specified in § 26.4(a)(4) have at least 1 day off in any 7-day period;

(5) * * *

(i) During the first 60 days of a unit outage or a planned security system outage, licensees need not meet the requirements of § 26.205(d)(3) or (d)(7). However, licensees shall ensure that these individuals have at least 4 days off in each successive (*i.e.,* non-rolling) 15-day period; and

(ii) During the first 60 days of an unplanned security system outage or increased threat condition, licensees need not meet the requirements of § 26.205(d)(3), (d)(5)(i), or (d)(7).

* * * * *

(7) Licensees may, as an alternative to complying with the minimum days off requirements in § 26.205(d)(3), comply with the requirements for maximum average work hours in this paragraph. Licensees voluntarily choosing to comply with the alternative maximum average work hours requirements in this paragraph are not relieved from complying with all other requirements in § 26.205 other than § 26.205(d)(3).

(i) Individuals may not work more than a weekly average of 54 hours, calculated using a rolling period of up to six (6) weeks, which rolls by no more than 7 consecutive calendar days at any time.

(ii) Each licensee shall state, in its FFD policy and procedures required by § 26.27 and § 26.203(a) and (b), with which requirements the licensee is complying: the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).

(e) * * *

(1) * * *

(i) Individuals whose actual hours worked during the review period exceeded an average of 54 hours per week in any shift cycle while the

individuals' work hours are subject to the requirements of § 26.205(d)(3) or in any averaging period of up to 6 weeks, using the same averaging period durations that the licensees use to control the individuals' work hours, while the individuals' work hours are subject to the requirements of § 26.205(d)(7);

* * * * *

4. Section 26.207 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 26.207 Waivers and assessments.

(a) *Waivers.* Licensees may grant a waiver of one or more of the work hour controls in § 26.205(d)(1) through (d)(5)(i) and (d)(7), as follows:

* * * * *

(b) *Force-on-force tactical exercises.* For the purposes of compliance with the minimum days off requirements of § 26.205(d)(3) or the maximum average work hours requirements of § 26.205(d)(7), licensees may exclude shifts worked by security personnel during the actual conduct of NRC-evaluated force-on-force tactical exercises when calculating the individual's number of days off or hours worked, as applicable.

* * * * *

5. Section 26.209 is amended by revising paragraph (a) to read as follows:

§ 26.209 Self-declarations.

(a) If an individual is performing, or being assessed for, work under a waiver of one or more of the requirements contained in § 26.205(d)(1) through (d)(5)(i) and (d)(7) and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties, the licensee shall immediately stop the individual from performing any duties listed in § 26.4(a), except if the individual is required to continue performing those duties under other requirements of 10 CFR part 26. If the subject individual must continue performing the duties listed in § 26.4(a) until relieved, the licensee shall immediately take action to relieve the individual.

* * * * *

6. Section 26.211 is amended by revising paragraphs (b)(2)(iii) and (d) to read as follows:

§ 26.211 Fatigue assessments.

* * * * *

(b) * * *

(2) * * *

(iii) Evaluated or approved a waiver of one or more of the limits specified in § 26.205(d)(1) through (d)(5)(i) and (d)(7) for any of the individuals who were performing or directing (on site) the work activities during which the event occurred, if the event occurred while such individuals were performing work under that waiver.

* * * * *

(d) The licensee may not conclude that fatigue has not or will not degrade the individual's ability to safely and competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in § 26.205(d)(1), the individual has had the minimum breaks required in § 26.205(d)(2) or minimum days off required in § 26.205(d)(3) through (d)(5), as applicable, or the individual's hours worked have not exceeded the maximum average number of hours worked in § 26.205(d)(7).

* * * * *

Dated at Rockville, Maryland, this 13th day of April, 2011.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Acting Executive Director for Operations.

[FR Doc. 2011–9925 Filed 4–25–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0385; Directorate Identifier 2010–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–300, A340–500, and A340–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a Back-up Control Module (BCM) retrofit campaign * * *, some BCMs have been found with loose gyrometer screws.

* * * When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.

* * * * *

* * * [S]everal Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.

* * * * *

The unsafe condition is loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 10, 2011.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0385; Directorate Identifier 2010–NM–256–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0191, dated September 27, 2010 [Corrected October 7, 2010] (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a Back-up Control Module (BCM) retrofit campaign in accordance with EASA AD 2006–0313 requirements, some BCMs have been found with loose gyrometer screws.
>
> The gyrometer is installed on the DELRIN plate by internal screws and the DELRIN plate is installed on BCM casing by external screws.
>
> Investigations done by the BCM manufacturer SAGEM have shown that the root cause of these events is a lack of design robustness of the BCM. When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.
>
> EASA AD 2008–0131 was issued to prohibit aeroplane dispatch with FCPC3 inoperative (from GO IF to NO GO) as an interim solution, limited to A330 and A340–300 fitted with electrical rudder.
>
> After EASA AD 2008–0131 issuance, several Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.
>
> EASA AD 2009–0153 retained the requirements of EASA AD 2008–0131 and extended the applicability to A340–500/–600 aeroplanes.
>
> This [EASA] AD, which supersedes EASA AD 2009–0153 retaining its requirements, requires the installation of:
>
> —a new BCM on A330 and A340–300 series aeroplanes fitted with electrical rudder, and
>
> —an improved PFTU on A330 and A340–300 series aeroplanes fitted with an electrical rudder and A340–500/–600 series aeroplanes,
>
> which, once installed, eliminate the root cause of the unsafe condition and cancel the operational limitation.
>
> * * * * *

The unsafe condition is loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the service bulletins in the following table.

SERVICE BULLETINS

Document	Date
Airbus Mandatory Service Bulletin A330–27–3169	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–4167	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–5053	May 3, 2010.
Airbus Service Bulletin A330–27–3161	November 6, 2009.
Airbus Service Bulletin A340–27–4160	November 6, 2009.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 46 products of U.S. registry. We also estimate that it would take about 17 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 costs. 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 $66,470, or $1,445 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2011–0385; Directorate Identifier 2010–NM–256–AD.

Comments Due Date

(a) We must receive comments by June 10, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers on which Airbus modification 49144 (install electrical rudder) has been embodied in production, except those on which Airbus modification 58118 and Airbus modification 200667 have been embodied in production.

(2) Airbus Model A340–311, –312, and –313 airplanes, all manufacturer serial numbers on which Airbus modification 49144 has been embodied in production, except those on which Airbus modification 58118 and Airbus modification 200667 have been embodied in production.

(3) Airbus Model A340–541 and –642 airplanes, all manufacturer serial numbers, except those on which Airbus modification 200667 has been embodied in production.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a Back-up Control Module (BCM) retrofit campaign * * *, some BCMs have been found with loose gyrometer screws.

* * * When the aeroplane is in control back up configuration (considered to be an extremely remote case), an oscillation of the BCM output order may cause degradation of the BCM piloting laws, potentially leading to erratic motion of the rudder and possible subsequent impact on the Dutch Roll, which constitutes an unsafe condition.

* * * * *

* * * [S]everal Pedal Feel Trim Units (PFTU) have been found with loose or broken screws during the accomplishment of maintenance tasks on A330 fitted with electrical rudder and A340–600. The loose or failed screws could lead to the loss of the coupling between the Rotary Variable Differential Transducer (RVDT) shaft and the PFTU shaft, and consequently to a potential rudder runaway when the BCM is activated.

* * * * *

The unsafe condition is loss of control of the airplane.

Compliance

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

Dispatch Prohibition

(g) As of the effective date of this AD, dispatch with the flight control primary computer (FCPC) 3 'PRIM 3' inoperative is prohibited unless the applicable modifications required by this AD have been done within the compliance time in this AD.

Airplane Flight Manual Revision

(h) Within 30 days after the effective date of this AD, revise the Limitations section of the Airbus A330 or A340 airplane flight manual (AFM), as applicable, to include the following statement: "Dispatch with the flight control primary computer (FCPC) 3 'PRIM 3' inoperative is prohibited." This may be done by inserting a copy of this AD into the AFM.

Note 1: When a statement identical to that in paragraph (h) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Modification

(i) For Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, and A340–311, –312, and –313 series airplanes, within 48 months after the effective date of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD:

(1) Modify the BCM, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3161 (for Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343 airplanes) or A340–27–4160 (for Model A340–311, –312, and –313 airplanes), both dated November 6, 2009, as applicable.

(2) Modify the PFTU, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27–3169 or A340–27–4167, both dated May 3, 2010, as applicable.

(j) For Airbus Model 340–541 and –642 airplanes: Within 48 months after the effective date of this AD, modify the PFTU, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–27–5053, dated May 3, 2010.

Terminating Action

(k) Modifying both the BCM and PFTU as required by paragraphs (i)(1) and (i)(2) of this AD, terminates the requirements of paragraphs (g) and (h) of this AD.

(l) Modifying the PFTU as required by paragraph (j) of this AD, terminates the requirements in paragraphs (g) and (h) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(m) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International

Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(n) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0191, dated September 27, 2010 [Corrected October 7, 2010], and the service bulletins listed in table 1 of this AD, for related information.

TABLE 1—AIRBUS SERVICE BULLETINS

Document	Date
Airbus Mandatory Service Bulletin A330–27–3169	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–4167	May 3, 2010.
Airbus Mandatory Service Bulletin A340–27–5053	May 3, 2010.
Airbus Service Bulletin A330–27–3161	November 6, 2009.
Airbus Service Bulletin A340–27–4160	November 6, 2009.

Issued in Renton, Washington, on April 18, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10007 Filed 4–25–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release No. 34–64314; File No. 4–625]

Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCIES: Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC") (each, an "Agency," and collectively, the "Agencies").

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On Monday, May 2, 2011, and Tuesday, May 3, 2011, commencing each day at 9:30 a.m. and ending at 4 p.m., staff of the Agencies will hold a public roundtable meeting at which invited participants will discuss various issues related to the schedule for implementing final rules for swaps and security-based swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone. Call-in participants should be prepared to provide their first name, last name and affiliation. The information for the conference call is set forth below.

- *U.S. Toll-Free:* (866) 844–9416.
- *International Toll:* information on international dialing can be found at the following link: *http://www.cftc.gov/PressRoom/PressReleases/internationalnumbers021811.html.*
- *Conference ID:* 1212444.

A transcript of the public roundtable discussion will be published at *http://www.cftc.gov/PressRoom/Events/2011/index.htm*. The roundtable discussion will take place each day in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Monday, May 2, 2011, and Tuesday, May 3, 2011, commencing each day at 9:30 a.m. and ending at 4 p.m. Members of the public who wish to comment on the topics addressed at the discussion, or on any other topics related to the schedule for implementing final rules for swaps and security-based swaps under the Act, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; or
- Electronic submission via visiting *http://comments.cftc.gov/PublicComments/CommentForm.aspx?id=1000* and submitting comments through the CFTC's Web site; and/or by e-mail to *rule-comments@sec.gov* (all e-mails must reference the file number 4–625 in the subject field) or through the comment form available at: *http://www.sec.gov/rules/other.shtml.*

All submissions will be reviewed jointly by the Agencies. All comments must be in English or be accompanied by an English translation. All submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

By the Commodity Futures Trading Commission.

Dated: April 20, 2011.

David A. Stawick,

Secretary.

By the Securities and Exchange Commission.

Dated: April 20, 2011.

Elizabeth M. Murphy,

Secretary.

Concurring Statement of CFTC Commissioner Scott D. O'Malia; Implementation Roundtable Seriatim; Certainty & Transparency

I concur in supporting the Commission's roundtable on the implementation process.

Along with the Chairman, I believe that our entire rulemaking process should be as transparent as possible to the public. Consequently, after the Roundtable is complete, I strongly recommend that the Commission submit both a proposal on the order in which the Commission will consider final rulemakings and a proposed implementation plan to the **Federal Register** to allow the public to comment before we begin to consider final rules. Once we receive and review comments, a final rulemaking and implementation schedule should be published in the **Federal Register**. This level of transparency will give the market a clear picture of how the Commission intends to proceed, and how we can be held accountable as we undertake this massive regulatory overhaul. It will also provide the market with certainty market participants need to make the critical investment decisions necessary to be in compliance with the rules upon implementation. Finally, this type of transparency will help guide the Commission's decision regarding when to make critical investments in advanced technology that are necessary for us to effectively oversee the futures, options, and swaps markets.

The more thoughtful, deliberate, and transparent our sequencing and implementation processes are, the more orderly this Commission's regulation of the swaps market will be.

[FR Doc. 2011–10158 Filed 4–25–11; 8:45 am]

BILLING CODE 8011–01–P; 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–29–000]

Electric Reliability Organization Interpretation of Transmission Operations Reliability

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) proposes to approve the North American Electric Reliability Corporation's (NERC's) proposed interpretation of Reliability Standard, TOP–001–1, Requirement R8.

DATES: Comments are due June 27, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Electronic Submission:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, see, e.g., the "Quick Reference Guide for Paper Submissions," *available at http://www.ferc.gov/docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Robert T. Stroh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8473.

Eugene Blick (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–8066.

David O'Connor (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Telephone:* (202) 502–6695.

SUPPLEMENTARY INFORMATION: Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Notice of Proposed Rulemaking (Issued April 21, 2011)

1. Under section 215 of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) proposes to approve the North American Electric Reliability Corporation's (NERC's) proposed interpretation of Requirement R8 in Commission-approved NERC Reliability Standard TOP–001–1 — Reliability Responsibilities and Authorities.[2] The Commission proposes to approve the interpretation as discussed below.

I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. If approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently.

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[3] and, subsequently, certified NERC as the ERO.[4] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard TOP–001–1.[5]

4. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[6] The ERO's "standards process manager" will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and filed with the applicable regulatory authority for regulatory approval.

A. Reliability Standard TOP–001–1

5. Reliability Standard TOP–001–1 (Reliability Responsibilities and Authorities) centers on the responsibilities of balancing authorities and transmission operators during a system emergency. Specifically, the stated purpose of Reliability Standard TOP–001–1 is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission

[1] 16 U.S.C. 824o (2006).

[2] The Commission is not proposing any new or modified text to its regulations. As provided in 18 CFR part 40, proposed interpretation of a Reliability Standard will not become effective until approved by the Commission, and the ERO must post on its Web site each effective Reliability Standard.

[3] *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).

[4] *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 (DC Cir. 2009).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 27–29 (2010).

system to normal conditions during an emergency. Requirement R8 of the standard provides:

> During a system emergency, the Balancing Authority and Transmission Operator shall immediately take action to restore the Real and Reactive Power Balance. If the Balancing Authority or Transmission Operator is unable to restore Real and Reactive Power Balance it shall request emergency assistance from the Reliability Coordinator. If corrective action or emergency assistance is not adequate to mitigate the Real and Reactive Power Balance, then the Reliability Coordinator, Balancing Authority, and Transmission Operator shall implement firm load shedding.[7]

B. NERC Proposed Interpretation

6. NERC submitted its petition for approval for an interpretation of Requirement R8 in Commission-approved Reliability Standard TOP–001–1 on July 16, 2010. Consistent with the NERC Rules of Procedure, NERC states that it assembled a team to respond to the request for interpretation and presented the proposed interpretation to industry ballot, using a process similar to the process it uses for the development of Reliability Standards.[8] According to NERC, the interpretation was developed and approved by industry stakeholders using the NERC Reliability Standards Development Procedure and approved by the NERC Board of Trustees (Board). In the NERC Petition, NERC explains that it received a request from Florida Municipal Power Pool (FMPP) seeking an interpretation of Reliability Standard TOP–001–1, Requirement R8. Specifically, FMPP requested clarification on several aspects of Requirement R8. FMPP asked the following:

> Balancing real power is not a function of a [Transmission Operator] and balancing reactive power is not a function of a [Balancing Authority]. For Requirement R8 is the Balancing Authority responsibility to immediately take corrective action to restore Real Power Balance and is the [Transmission Operator] responsibility to immediately take corrective action to restore Reactive Power Balance? [9]

7. In response to FMPP's interpretation request, NERC provided the following:

> The answer to both questions is yes. According to the NERC Glossary of Terms Used in Reliability Standards, the Transmission Operator is responsible for the reliability of its "local" transmission system, and operates or directs the operations of the transmission facilities. Similarly, the Balancing Authority is responsible for maintaining load-interchange-generation balance, i.e., real power balance. In the context of this requirement, the Transmission Operator is the functional entity that balances reactive power. Reactive power balancing can be accomplished by issuing instructions to the Balancing Authority or Generator Operators to alter reactive power injection. Based on NERC Reliability Standard BAL–005–1b Requirement R6, the Transmission Operator has no requirement to compute an Area Control Error (ACE) signal or to balance real power. Based on NERC Reliability Standard VAR–001–1 Requirement R8, the Balancing Authority is not required to resolve reactive power balance issues. According to TOP–001-Requirement R3, the Balancing Authority is only required to comply with Transmission Operator or Reliability Coordinator instructions to change injections of reactive power.[10]

8. NERC contends that the interpretation is consistent with the stated purpose of the Reliability Standard, which is to ensure reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency. NERC adds that the interpretation clarifies the responsibilities of balancing authorities and transmission operators during a system emergency by referencing the *NERC Glossary of Terms Used in Reliability Standards* as well as other relevant Reliability Standards.[11]

9. On February 14, 2011, NERC made a supplemental filing in response to a Commission staff data request.[12] With regard to whether Requirement R8 obligates a joint response in a system emergency, NERC explained that Requirement R8 does not use the word "joint" or otherwise infer joint responsibility during system emergencies. Rather, NERC responded that the balancing authority and transmission operator have separate responsibilities to restore real and reactive power balance during system emergencies. NERC also stated that the use of "and" between the two entities should not construe communication or coordination. NERC added that the Blackout Report [13] correctly identifies communication and coordination issues as reliability issues and that communication and coordination are addressed in the Communications (COM) Reliability Standards.[14]

II. Proposed Determination

10. We propose to approve NERC's interpretation of Reliability Standard TOP–001–1, Requirement R8. We believe that the ERO has presented a reasonable interpretation consistent with the language of the Reliability Standard. In addition, as discussed below, we note that a balancing authority and transmission operator each have coordination and communication functions that are necessary for maintaining real and reactive power balance.

Discussion

11. We propose to approve NERC's interpretation of TOP–001–1, Requirement R8. As explained by NERC, the interpretation supports the stated purpose of the Reliability Standard, i.e., ensuring that reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency.[15] The interpretation also clarifies the responsibilities of a balancing authority and transmission operator during a system emergency. Further, the language is consistent with the language of the requirement. Accordingly, the Commission proposes to approve the ERO's interpretation of TOP–001–1, Requirement R8.

12. We agree, as discussed in the interpretation, that the balancing authority is responsible for restoring real power balance during a system emergency and the transmission operator is responsible for restoring reactive power balance during a system emergency. However, during a system emergency, communication and coordination between the transmission operator and balancing authority can be essential to restore real and reactive power balance. For example, during an emergency, the balancing authority may rely on the real power output of a generator to fulfill its responsibility, while the transmission operator may expect the same generator unit to reduce real power to generate greater reactive power output.[16]

[7] Reliability Standard TOP–001–1, Requirement R8.

[8] NERC Reliability Standards Development Procedure at 27–29.

[9] NERC Petition at 5.

[10] *Id.* at 5–6

[11] *Id.* at 6.

[12] Response of the North American Electric Reliability Corporation to Request for Additional Information Regarding Interpretation to Reliability Standard TOP–001–1, Requirement R8 (NERC Response).

[13] *Final Report on the August 14, 2003 Blackout in the United States and Canada* (Blackout Report).

[14] NERC Response at 4–7.

[15] *Id.* at 6.

[16] The Blackout Report described such a scenario, explaining that a generator unit tripped because the unit's protection system detected the Var output, i.e., reactive power, exceeded the unit's capability. Blackout Report at 27. The Blackout Report also explained that no generator units were asked to

Continued

13. NERC acknowledges the need for such communication and coordination. NERC maintains that this coordination and communication is required through two currently-effective Communication (COM) Reliability Standards: (1) COM–001–1.1–Telecommunications and (2) COM–002–2—Communication and Coordination.[17]

14. We agree with NERC that the currently effective COM Reliability Standards provide for such communication and coordination. For example, Reliability Standard COM–002–2, Requirement R1 provides that transmission operators, balancing authorities and generator operators must have communication links with one another and must be staffed to address a real-time emergency. Reliability Standard EOP–001–0, Requirements R3, R4.3 and R7 also contain provisions relevant to such communication and coordination in emergencies. These provisions require balancing authorities and transmission operators to develop plans to mitigate operating emergencies including coordination among adjacent transmission operators and balancing authorities.

15. Accordingly, for the reasons discussed above, we propose to approve NERC's proposed interpretation of TOP–001–1, Requirement R8.

III. Information Collection Statement

16. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[18] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[19]

17. As stated above, the Commission approved, in Order No. 693, Reliability Standard TOP–001–1 that is the subject of the current rulemaking. This proposed rulemaking proposes to approve the interpretation of the previously approved Reliability Standard, which was developed by NERC as the ERO. The proposed interpretation, as clarified, relates to an existing Reliability Standard, and the Commission does not expect it to affect entities' current reporting burden.[20] Accordingly, we will submit this proposed rule to OMB for informational purposes only.

18. For the purposes of reviewing this interpretation, the Commission seeks information concerning whether the interpretation will affect respondents' burden or cost.

Title: Mandatory Reliability Standards for the Bulk-Power System.

Action: FERC–725A.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

19. *Necessity of the Information:* This proposed rule would approve the proposed interpretation of Reliability Standard, TOP–001–1, Requirement R8. The proposed rule would find the interpretation just, reasonable, not unduly discriminatory or preferential, and in the public interest. The TOP–001–1 Reliability Standard helps ensure the reliable operation of the North American Bulk-Power System by ensuring "reliability entities have clear decision-making authority and capabilities to take appropriate actions or direct the actions of others to return the transmission system to normal conditions during an emergency."[21]

20. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, *e-mail: DataClearance@ferc.gov, Phone:* (202) 502–8663, *fax:* (202) 273–0873].

For submitting comments concerning the collection of information and the associated burden estimate, please submit your comments to FERC and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, *phone:* (202) 395–7345, *fax:* (202) 395–7285]. Due to security concerns, comments should be sent electronically to the following e-mail address at OMB: *oira submission@omb.eop.gov.* Please refer to OMB Control No. 1902–0244, and the docket number of this proposed rule in your submission.

IV. Environmental Analysis

21. 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.[22] 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.[23] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

22. The Regulatory Flexibility Act of 1980 (RFA)[24] 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 proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[25] The SBA has established a size standard for electric utilities, stating that 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.[26] The RFA is not implicated by this proposed rule because the interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

23. The Commission approved Reliability Standard TOP–001–1 in 2007 in Order No. 693. The proposed rulemaking in the immediate docket addresses an interpretation of Requirement R8 of previously-approved TOP–001–1. The proposed interpretation clarifies current compliance obligations of balancing authorities and transmission operators and therefore, does not create an additional regulatory impact on small entities.

VI. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this

reduce their real power output to produce more reactive power. *Id.* at 47.

[17] NERC Response at 6–7. NERC also identifies several ongoing Reliability Standards projects that are intended to strengthen the requirements around communication and coordination between functional entities.

[18] 5 CFR 1320.11.

[19] 44 U.S.C. 3507(d).

[20] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1901–1907.

[21] The purpose of Standard TOP–001–1, according to the NERC Web site at *http://www.nerc.com/files/TOP–001–1.pdf.*

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

[23] 18 CFR 380.4(a)(2)(ii).

[24] 5 U.S.C. 601–612.

[25] 13 CFR 121.101.

[26] 13 CFR 121.201, Section 22, Utilities, & n.1.

notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 60 days from publication in the **Federal Register**. Comments must refer to Docket No. RM10–29–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

28. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

29. From FERC'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.

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

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10010 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 110420253–1253–01]

RIN 0625–AA88

Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Commerce (the Department) proposes to modify its regulation that states that provisional measures during an antidumping or countervailing duty investigation usually take the form of a bonding requirement. The modification, if adopted, would establish that the provisional measures during an antidumping or countervailing duty investigation will normally take the form of a cash deposit.

DATES: To be assured of consideration, comments must be received no later than May 26, 2011.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2011–0005, unless the commenter does not have access to the Internet. Commenters who do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625–AA88.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and online at *http://www.Regulations.gov* and on the Department's Web site at *http://www.trade.gov/ia/.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Futtner at (202) 482–3814, Mark Ross at (202) 482–4794, or Joanna Theiss at (202) 482–5052.

SUPPLEMENTARY INFORMATION:

Background

The Department proposes to modify its regulation to establish that the provisional measures during an antidumping or countervailing duty investigation will normally take the form of a cash deposit. The provisional measures period is the period between the publication of the Department's preliminary affirmative determination and the earlier of (1) the expiration of the applicable time period set forth in sections 703(d) and 733(d) the Tariff Act of 1930, as amended (the Act), or (2) the publication of the International Trade Commission's final affirmative injury determination.[1] During the provisional measures period in antidumping and countervailing duty investigations, the Department is instructed by the Act to order "the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate." *See* Sections 703(d)(1)(B) and 733(d)(1)(B) of the Act.

Our regulations describe the preliminary determination in antidumping and countervailing duty investigations as the first point at which the Department may provide a remedy if we preliminarily find that dumping or countervailable subsidies has occurred. The regulations at 19 CFR 351.205(a) state that, "[t]he remedy (sometimes

[1] Also, pursuant to sections 703(e)(2) and 733(e)(2) of the Act, if the Department makes an affirmative determination of critical circumstances, then provisional measures shall apply on or after the later of (A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (B) the date on which notice of the determination to initiate the investigation is published in the **Federal Register**.

referred to as 'provisional measures') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed." Section 351.205(d) states that, "[i]f the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) (whichever is applicable)."

A key reason for requiring that the provisional measures during an antidumping or countervailing duty investigation take the form of a cash deposit is to better ensure that importers bear full responsibility for any future antidumping and countervailing duties they may owe. While most of the duties on entries secured by a bond during the provisional measures period are ultimately collected, these collections can be very slow and involve burdensome administrative problems for U.S. Customs and Border Protection (CBP).

We also believe that this change to our regulation will bring the United States in line with the practices of other World Trade Organization (WTO) Members. We are aware of no other WTO Member that is currently permitting importers the option of posting bonds during the provisional measures period of antidumping and countervailing duty investigations.

Explanation of Proposed Modification to 19 CFR 351.205

The second sentence of 19 CFR 351.205(a) states that, "[t]he remedy (sometimes referred to as 'provisional measures') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed." The Department proposes deleting most of this sentence because U.S. importers would normally no longer be permitted to post bonds during the provisional measures period. The Department proposes keeping the "(sometimes referred to as 'provisional measures')" phrase and moving it to the first sentence of 19 CFR 351.205(a). We view this phrase as a useful link between this part of our regulations and the terminology under Article 7 of the WTO Antidumping Agreement. Further, to clarify that provisional measures will take the form of cash deposits the Department proposes adding a sentence to 19 CFR 351.205(d) that states, "[w]ith respect to section 703(d)(1)(B) and 733(d)(1)(B) of the Act, the Secretary will normally order the posting of cash deposits to ensure payment if antidumping or countervailing duties ultimately are imposed." This change, in our view, places the requirement for cash deposits in the appropriate part of 19 CFR 351 (*i.e.,* in the part that explains the effects of an affirmative preliminary determination). These modifications would reflect the Department's change in practice of normally requiring cash deposits rather than bonds during the provisional measures period. This modification is also in line with 19 CFR 351.205(d), which provides that "if the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable)" because these sections of the Act provide that the Department shall order the posting of cash deposits or bonds, as the Department deems appropriate.

Classification

Executive Order 12866

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

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble, and is not repeated here.

The entities upon which this rulemaking could have an impact include foreign exporters and producers, some of whom are affiliated with U.S. companies, and U.S. importers. Some of these entities may be considered small entities under the SBA small business size standard. The Department is not able to estimate the number of small entities this proposed rule will affect; however, the Department anticipates that it will not be a substantial number based on our experience with the administration of antidumping and countervailing duty proceedings.

The Department also estimates that this proposed rule's economic impact on small entities will not be significant. In 2008 and 2009, antidumping and countervailing duty remedies were applied to less than 2% of imports into the United States. Further, because provisional antidumping and countervailing duties only apply during the investigation phase of a case, this proposed rule is not applicable to a significant portion of our antidumping and countervailing duty remedies. Finally, the Act provides that provisional measures may only be in force for a four-month period, which can be extended to no longer than six months in antidumping cases.

Moreover, given the nature of our retrospective duty assessment system, eliminating effectively the bonding option and requiring cash deposits during the provisional measure period should not have a significant economic impact on small business entities. Under the U.S. retrospective system, for the provisional measure period an estimated antidumping or countervailing duty rate is established (based on the dumping margin or subsidy rate found in the preliminary determination of the original investigation), and this rate is applied to subject merchandise as it is imported. This duty rate is for deposit purposes only. Final duties are not assessed at the time the subject merchandise is imported into the United States. Rather, beginning one year after the imposition of any antidumping or countervailing duty order, interested parties (*e.g.,* domestic producers, importers, or foreign exporters) may request an administrative review to determine the actual amount of duties to be collected based on the level of dumping or subsidization that occurred during the review period. Further, small business entities will continue to have the option to post cash deposits during the provisional measures period, either from the entity's assets or borrowed from third parties.

For all of these reasons, the proposed rule would not have a significant economic impact on a substantial number of small business entities. Since this proposed modification to 19 CFR 351.222, if adopted, will not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis is not required and, therefore, has not been prepared.

Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: April 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is proposed to be amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

2. In § 351.205, revise paragraphs (a) and (d) to read as follows:

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy (sometimes referred to as "provisional measures") if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

* * * * *

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). With respect to section 703(d)(1)(B) and 733(d)(1)(B) of the Act, the Secretary will normally order the posting of cash deposits to ensure payment if antidumping or countervailing duties ultimately are imposed. In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

[FR Doc. 2011–10045 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0230]

RIN 1625–AA00

Safety Zone, Newport River; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a safety zone on the waters of the Newport River under the main span US 70/Morehead City—Newport River high rise bridge in Carteret County, NC. This safety zone is necessary to provide for safety of life on navigable waters during the disestablishment of staging for bridge maintenance. This rule will enhance the safety of the contractors performing maintenance as well as the safety of the vessels that plan to transit this area between 10 a.m. and 4 p.m. on August 20, 2011.

DATES: Comments and related material must be received by the Coast Guard on or before May 26, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0230 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0230), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2011–0230" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble

as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0230" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The State of North Carolina Department of Transportation awarded a contract to Astron General Contracting Company of Jacksonville, NC to perform bridge maintenance on the US Highway 70 Fixed bridge crossing Newport River at Morehead City, North Carolina. The contract provides for cleaning, painting, and steel repair to begin on June 1, 2011 and will be completed by August 20, 2011. The contractor requires the main channel in the vicinity of the bridge to remain closed during demobilization on August 20, 2011 from 10 a.m. to 4 p.m. The Coast Guard will temporarily restrict access to this section of Newport River during the demobilization of the bridge maintenance equipment.

Discussion of Proposed Rule

The temporary safety zone will encompass the waters of the Newport River directly under the bridge, latitude 34°43′15″ North, longitude 076°41′39″ West, and 100 yards on either side of the US Highway 70 Fixed bridge. All vessels are prohibited from transiting this section of the waterway while the safety zone is in effect. Entry into the safety zone will not be permitted except as specifically authorized by the Captain of the Port or a designated representative. To seek permission to transit the area, mariners may contact Sector North Carolina at (252) 247–4570. This zone will be enforced from 10 a.m. to 4 p.m. on August 20, 2011.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited time, from 10 a.m. to 4 p.m., on August 20, 2011, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to the section of the Newport River in the immediate vicinity of the US Highway 70 Fixed bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and fishing vessels intending to transit the specified portion of Newport River from 10 a.m. to 4 p.m. on August 20, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for six hours from 10 a.m. to 4 p.m. Although the safety zone will apply to the section of the Newport River in the vicinity of the bridge, vessel traffic may use alternate waterways to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO3 Joseph Edge, Waterways Management Division Chief, Sector North Carolina, at (252) 247–4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of this instruction. This proposed rule involves the establishment of a temporary safety zone to protect the public from bridge maintenance operations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05–0230 to read as follows:

§ 165.T05–0230 SAFETY ZONE; Newport River, Morehead City, North Carolina.

(a) *Definitions.* For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: This zone includes the waters of Newport River directly under the main span of the U.S. Highway 70 fixed bridge at Morehead City, North Carolina, located at latitude 34°43′15″ North, longitude 076°41′39″ West, and 100 yards on either side of that bridge.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (252) 247–4570 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 10 a.m. to 4 p.m. on August 20, 2011 unless cancelled earlier by the Captain of the Port.

Dated: April 12, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–9984 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2800

[WO 300–1430–PQ]

RIN 1004–AE19

Segregation of Lands—Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing this rule to amend the BLM's regulations found in 43 CFR parts 2090 and 2800 by adding provisions allowing the BLM to temporarily segregate from the operation of the public land laws, by publication of a **Federal Register** notice, public lands included in a pending or future wind or solar energy generation right-of-way (ROW) application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization under the BLM's ROW regulations, in order to promote the orderly administration of the public lands. If segregated under this rule, such lands would not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (Mining Law), but not the Mineral Leasing Act of 1920 (Mineral Leasing Act) or the Materials Act of 1947 (Materials Act), subject to valid existing rights, for a period of up to 2 years. The BLM is also publishing in today's **Federal Register** an interim temporary final rule (Interim Rule) that is substantively similar to this proposed rule. The Interim Rule is effective immediately upon publication in the **Federal Register** for a period not to exceed 2 years after publication, or the completion of the notice and comment rulemaking process for this proposed rule whichever occurs first.

DATES: You should submit your comments on the proposed rule on or before June 27, 2011. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (*see* **ADDRESSES**).

ADDRESSES: Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Ray Brady at (202) 912–7312 or the Division of Lands, Realty, and Cadastral Survey at (202) 912–7350 for information relating to the BLM's renewable energy program or the substance of the proposed rule, or Ian Senio at (202) 912–7440 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

If you wish to comment, you may submit your comments by one of several methods:

You may mail comments to Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St., NW., Washington, DC 20240, *Attention:* 1004–AE19. You may deliver comments to U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, *Attention:* Regulatory Affairs, Washington, DC 20003; or

You may access and comment on the proposed rule at the Federal eRulemaking Portal by following the instructions at that site (*see* **ADDRESSES**).

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing.

The BLM need not consider or include in the Administrative Record for the proposed rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street, SE., Room 2134LM, Washington, DC 20003 during regular hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. They will also be available at the Federal eRulemaking Portal *http://www.regulations.gov*. Follow the instructions at this Web site.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

Congress has directed the Department of the Interior (Department) to facilitate the development of renewable energy resources. Promoting renewable energy is one of this Administration's and this Department's highest priorities. In Section 211 of the Energy Policy Act of 2005 (119 Stat. 660, Aug. 8, 2005) (EPAct), Congress declared that before 2015 the Secretary of the Interior should seek to have approved non-hydropower renewable energy projects (solar, wind, and geothermal) on public lands with a generation capacity of at least 10,000 megawatts (MW) of electricity. Even before the EPAct was enacted by Congress, President Bush issued Executive Order 13212, "Actions to Expedite Energy-Related Projects" (May 18, 2001), which requires Federal agencies to expedite the production, transmission, or conservation of energy.

After passage of the EPAct, the Secretary of the Interior issued several orders emphasizing the importance of renewable energy development on public lands. On January 16, 2009, Secretary Kempthorne issued Secretarial Order 3283, "Enhancing Renewable Energy Development on the Public Lands," which states that its purpose is to "facilitate[ ] the Department's efforts to achieve the goal Congress established in Section 211 of the * * * [EPAct] to approve non-hydropower renewable energy projects on the public lands with a generation capacity of at least 10,000 megawatts of electricity by 2015." The order also declared that "the development of renewable energy resources on the public lands will increase domestic energy production, provide alternatives to traditional energy resources, and enhance the energy security of the United States."

Approximately 1 year later, Secretary Salazar issued Secretarial Order 3285A1, "Renewable Energy Development by the Department of the Interior" (Feb. 22, 2010), which reemphasized the development of

renewable energy as a priority for the Department. The order states: "Encouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities. Agencies and bureaus within the Department will work collaboratively with each other, and with other Federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources." As a result of these and other initiatives, the interest in renewable energy development on public lands has increased significantly.

In addition to these specific directives, the BLM is charged generally with managing the public lands for multiple uses under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, *et seq.,* including for mining and energy development. In some instances, different uses may present conflicts. For example, a mining claim located within a proposed ROW for a utility-scale solar energy generation facility could impede the BLM's ability to process the ROW application because the Federal government's use of the surface cannot endanger or materially interfere with a properly located mining claim. In order to help avoid such conflicts while carrying out the Congressional and Executive mandates and direction to prioritize the development of renewable energy, the BLM is proposing this rule. This rule will help promote the orderly administration of the public lands by giving the BLM a tool to minimize potential resource conflicts between ROWs for proposed solar and wind energy generation facilities and other uses of the public lands. Under existing regulations, lands within a solar or wind energy generation ROW application or within an area identified by the BLM for such ROWs, unlike lands proposed for exchange or sale, remain open to appropriation under the public land laws, including location and entry under the Mining Law, while BLM is considering the ROW.

Over the past 5 years, the BLM has processed 24 solar and wind energy development ROW applications. New mining claims were located on the public lands described in two of these proposed ROWs during the BLM's consideration of the applications. Many of the mining claims in the two proposed ROWs were not located until after the existence of the wind or solar ROW application or the identification of an area by the BLM for such ROWs became publicly known. In addition, over the past 2 years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming and 216 new mining claims were located within solar energy ROW application areas. In the BLM's experience, some of these claims are likely to be valid, but others are likely to be speculative and not located for true mining purposes. As such, the latter are likely filed for no other purpose than to provide a means for the mining claimant to compel some kind of payment from the ROW applicant to relinquish the mining claim. The potential for such a situation exists because, while it is relatively easy and inexpensive to file a mining claim, it can be difficult, time-consuming, and costly to prove that the mining claim was not properly filed or does not contain a valid discovery. Regardless of the merits of a particular claim, the location of a mining claim in an area covered by a ROW application (or identified for such an application) creates uncertainty that interferes with the orderly administration of the public lands. This uncertainty makes it difficult for the BLM, energy project developers, and institutions that finance such development to proceed with such projects because a subsequently located mining claim potentially precludes final issuance of the ROW and increases project costs, jeopardizing the planned energy development.

For example, the location of a new mining claim during the pendency of the BLM's review process for a ROW application could preclude the applicant from providing a concrete proposal for their use and occupancy of the public lands. This is because under the Mining Law, a ROW cannot materially interfere with a previously located mining claim. Since all properly located claims are treated as valid until proven otherwise, the filing of any mining claim can substantially delay the processing of a ROW application. As a result, a ROW applicant could either wait for the BLM to determine the validity of a claim, or the applicant could choose to modify or relocate its proposed surface use to avoid conflicts with the newly located mining claim, leading to additional expense, which could jeopardize the renewable energy project.[1] The BLM's processing time for the ROW application could be significantly increased if any changes necessitated by the newly located mining claim require the BLM to undertake any additional analyses, such as those required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA). Under these circumstances, the BLM's ability to administer the public lands in an orderly manner is impeded.

This proposed rule is needed to provide the BLM with the necessary authority to ensure the orderly administration of the public lands and to prevent conflicts between competing uses of those lands. By allowing for temporary segregation, it would enable the BLM to prevent new resource conflicts from arising as a result of new mining claims that may be located within land covered by any pending or future wind or solar energy generation facility ROW applications, or public lands identified by the BLM for potential future wind or solar energy generation ROWs pursuant to its ROW regulations. Temporary segregation is generally sufficient because once a ROW has been authorized, subsequently located mining claims would be subject to the previously authorized use, and any future mining claimant would have notice of such use.

The proposed rule would supplement the authority contained in 43 CFR subpart 2091 to allow the BLM to segregate from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, public lands included in a pending or future wind or solar energy generation ROW application or public lands identified by the BLM for a wind or solar energy generation ROW authorization under 43 CFR subpart 2804, subject to valid existing rights.[2] This proposed rule would not affect valid existing rights in mining claims located before any segregation made pursuant to the final rule. The proposed rule also would not affect ROW applications for uses other than wind or solar energy generation facilities.

Segregations under the proposed rule would be accomplished by publishing a notice in the **Federal Register** and would be effective upon the date of publication. The BLM considered a rule that would allow for segregation through notation to the public land records, but it rejected this approach because it would not provide the public

[1] This uncertainty may also discourage banks from financing such projects.

[2] The existing regulations define segregation as "the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands." 43 CFR 2091.0–5(b).

with the same level of notice that a **Federal Register** notice would accomplish. The proposed rule would provide for segregation periods of up to 2 years, with the option, if deemed necessary by the appropriate BLM State Director, to extend the segregation of the lands for up to an additional 2 years. The proposed rule would not authorize the BLM to continue the segregation after a final decision on a ROW has been made. Finally, not all wind or solar ROW applications would lead to a segregation, as the BLM may reject some applications and others may not require segregation because conflicts with mining claims are not anticipated.

Segregation rules, like this proposed rule, have been held to be "reasonably related" to the BLM's broad authority to issue rules related to "the orderly administration of the public land laws," [3] because they allow the BLM to protect an applicant for an interest in such lands from "the assertion by others of rights to the lands while the applicant is prevented from taking any steps to protect" its interests because it has to wait for the BLM to act on its application.[4] It is for this purpose that existing regulations at 43 CFR subpart 2091 provide the BLM with the discretion to segregate lands that are proposed for various types of land disposals, such as land sales, land exchanges, and transfers of public land to local governments and other entities under the Recreation and Public Purposes Act of 1926. These regulatory provisions allowing segregations were put in place over the years to prevent resource conflicts, including conflicts arising from the location of new mining claims, which could create encumbrances on the title of the public lands identified for transfer out of Federal ownership under the applicable authorities.

Such a situation occurred in Nevada, and the proposed land purchaser chose to pay the mining claimant to relinquish his claims in order to enable the sale to go forward. In fact, in the land sales context, the segregative period was increased from 270 days to a maximum term of 4 years, as it was found that the original segregative period was insufficient and that conflicting mining claims were being located before sales could be completed. This proposed rule would provide the BLM the same flexibility it currently has for land disposals by allowing the BLM to temporarily segregate lands that are included in pending or future applications for solar and wind facility ROWs or on lands identified by the BLM for such ROWs. This would allow for the orderly administration of the public lands by eliminating the potential for conflicts with mining claims located after the BLM publishes a **Federal Register** notice of such ROW applications or areas.

As noted above, the development of renewable energy is a high priority for the Department of the Interior and the BLM. The location of mining claims, however, under certain circumstances, may impede the BLM's ability to administer the public lands in an orderly manner and to carry out its Congressional and Executive mandate to facilitate renewable energy development on those lands because the BLM currently lacks the ability to maintain the status quo on such lands while it is processing a ROW application for a wind or solar energy generation facility. This proposed rule would help the BLM maintain the status quo and prevent potential resource use conflicts by allowing the BLM to temporarily segregate lands being considered for a wind or solar energy generation facility.

III. Section-by-Section Analysis

This proposed rule would revise 43 CFR sections 2091.3–1 and 2804.25 by adding language that would allow the BLM to segregate lands, if the BLM determines it to be necessary for the orderly administration of the public lands. This authority to segregate lands would be limited to lands included in a pending or future wind or solar energy ROW application, or public lands identified by the BLM for a wind or solar energy generation ROW authorization under the BLM's ROW regulations. If segregated under this rule, such lands, during the limited segregation period, would not be subject to appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, subject to valid existing rights.

The new language also specifies that the segregative effect terminates and the lands would automatically reopen to appropriation under the public land laws, including the mining laws: (1) Upon the BLM's issuance of a decision regarding whether to issue a ROW authorization for the solar or wind energy generation proposal; (2) Upon publication of a **Federal Register** notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. The segregation would be effective for a period of up to 2 years; however, the rule provides that the segregation may be extended for an additional 2 years if the appropriate BLM State Director determines and documents in writing, prior to the expiration of the segregation, that an extension of the segregation is necessary for the orderly administration of the public lands. The BLM would publish an extension notice in the **Federal Register**, if it determines that an extension of the segregation is necessary. The extension of the segregation would not be for more than 2 years. The maximum total segregation period would not exceed 4 years.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action [5] and is not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed rule would provide the BLM with regulatory authority to segregate public lands included within a pending or future wind or solar energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization, from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, if the BLM determines that segregation is necessary for the orderly administration of the public lands. To assess the potential economic impacts, the BLM must first make some assumptions concerning when and how often this segregation authority may be exercised. The purpose of any segregation would be to allow for the orderly administration of the public lands to facilitate the development of renewable energy resources by avoiding conflicts between renewable energy development and the location of mining claims.

Wind—Wind energy ROW site testing and development applications are widely scattered in many western states. Most of the public lands with pending

[3] *See Bryon* v. *United States,* 259 F. 371, 376 (9th Cir. 1919); *Hopkins* v. *United States,* 414 F.2d 464, 472 (9th Cir. 1969).

[4] *See, e.g., Marian Q. Kaiser,* 65 I.D. 485 (Nov. 25, 1958).

[5] "Significant regulatory action" means any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy * * *; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs * * * or (4) Raise novel legal and policy issues arising out of legal mandates, the President's priorities, or * * * this Executive Order." Exec. Order No. 12866, 58 FR 51738 (Oct. 4, 1993).

wind energy ROW applications are currently managed for multiple resource use, including being open to mineral entry under the mining laws. Over the past 2 fiscal years, 437 new mining claims were located within wind energy ROW application areas in Arizona, California, Idaho, Nevada, Oregon, Utah, and Wyoming. Based on the BLM's recent experience processing wind energy ROW applications, it is anticipated that approximately 25 percent of the lands with current wind energy ROW applications will reach the processing stage where a Notice of Intent (NOI) is issued. Without trying to identify specific locations of new mining claims located within those application areas, we assume a quarter of those new mining claims, or 109 new mining claims, would be located within wind application areas that would be segregated under this new regulation.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically files and holds multiple mining claims. Of the 437 new mining claims filed within the wind energy ROW application areas in fiscal year (FY) 2009 and 2010, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number of claims and distribution of claims per claimant for FY 2009 and 2010, we estimate that 14 entities would be potentially precluded from filing new mining claims on lands that would be segregated within the identified wind energy ROW application areas under this rule. For these entities, the economic impacts of the segregation are the delay in when they could locate their mining claims and a potential delay in the development of such claims because such development would be subject to any approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and commercial viability of any individual claim, and the fact that the location of a mining claim is an early step in a long process that may eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the segregation provision is if a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require the preparation of a mineral examination report to determine if the mining claims were valid before the lands were segregated before it processes the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report.

Within the past 2-year period, five Plans of Operations and two Notices were filed with the BLM within wind ROW application areas. Assuming (1) A quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is somewhat reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate two entities might be affected by this rule change.[6]

Should the BLM require the preparation of mineral examination reports to determine claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. Understanding that every mineral examination report is unique and the costs vary accordingly, we assume an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the wind energy right-of-way application areas in FY 2009 and 2010, we estimate the total cost of this provision could be about $200,000 over the 2-year period.

Solar—As noted above, the primary purpose of any segregation under this proposed rule would be to allow for the orderly administration of the public lands to facilitate the development of valuable renewable resources and to avoid conflicts between renewable energy generation and mining claim location. The main resource conflict of concern involves mining claims that are located after the first public announcement that the BLM is evaluating a ROW application, and prior to when the BLM issues a final decision on the ROW application.

Most of the public lands with pending solar energy ROW applications are currently managed for multiple resource use, including mineral entry under the mining laws. Where the BLM segregates lands from mineral entry, claimants would not be allowed to locate any new mining claims during the 2-year segregation period. Over the past 2 years, 216 new mining claims were located within solar energy ROW application areas. Based on the BLM's recent experience processing solar energy ROW applications, it is anticipated that approximately 25 percent of the lands with current solar energy ROW applications would reach the processing stage where a NOI is issued. Without trying to identify which ROWs would be granted or the specific locations of new mining claims within those application areas, we assume a quarter of those new mining claims, or 54 new mining claims, would be located within solar ROW application areas that would be segregated under this rule.

The actual number of claimants affected will likely be less than this estimate since a single claimant typically locates and holds multiple mining claims. Of the 216 new mining claims located within solar energy ROW application areas in the past 2 years, there was an average of about eight mining claims per claimant. Assuming that there was nothing unique about the number and distribution of claims per claimant for the past 2 years, we estimate seven entities would potentially be precluded from locating new mining claims on lands segregated within the identified solar energy ROW application areas under the rule change. For these entities the economic impacts of the segregation would be the delay in when they can locate their mining claim and a potential delay in the development of such claim because such development would be subject to any approved ROW issued during the segregative period. However, a meaningful estimate of the value of such delays is hard to quantify given the available data because it depends on the validity and commercial viability of any individual claim, and the fact that the location of a mining claim is an early step in a long process that may eventually result in revenue generating activity for the claimant.

The other situation where entities might be affected by the proposed segregation provisions is where a new Plan of Operations or Notice is filed with the BLM during the 2-year segregation period. In such a situation, the BLM has the discretion under the Surface Management Regulations (43 CFR subpart 3809) to require a mineral examination to determine if the mining claims were valid before the lands were segregated before it approves the Plan of Operations or accepts the filed Notice. If required, the operator is responsible to pay the cost of the examination and report.

Within the past 2-year period, two Plans of Operations and two Notices were filed with the BLM within solar

[6] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the rule, the BLM would separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a), whether to require a validity determination for such Plan or Notice.

ROW application areas. Assuming (1) a quarter of those filings would be on lands segregated under this rule, (2) the number of Plan and Notice filings received in the past 2 years is reflective of what might occur within a 2-year segregation period, and (3) the BLM would require mineral examination reports to determine claim validity on all Plans and Notices filed within the segregation period, we estimate one entity might be affected by this rule change.[7]

Should the BLM require a mineral examination to determine claim validity, the entity filing the Plan or Notice would be responsible for the cost of making that validity determination. Understanding that every mineral examination report is unique and the costs would vary accordingly, we assume an average cost of $100,000 to conduct the examination and prepare the report. Based on the number of Plans and Notices filed within the solar energy ROW application areas in the past 2 years, we estimate the total cost of this provision could be about $100,000 over the 2-year period.

It is not possible to estimate the number of future rights-of-way for wind or solar energy developments that could be filed on areas identified as having potential for either of these sources of energy. This is because there are many variables that could have an impact on such filings. Such variables include: the quantity and sustainability of wind at any one site, the intensity and quantity of available sunlight, the capability of obtaining financing for either wind or solar energy projects, the proximity of transmission facilities that could be used to carry the power generated from a specific wind or solar energy right-of-way project, and the topography of the property involved. The number of mining claims would also be based on speculation as to the mineral potential of an area, access to markets, potential for profitability, and a host of other geologic factors, such as type of mineral, depth of the mineral beneath the surface, quantity and quality of the mineral, and other such considerations.

Based on this analysis, the BLM concludes that this proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs or the rights or obligations of their recipients; nor would it raise novel legal or policy issues. The full economic analysis is available at the office listed under the **ADDRESSES** section of this preamble.

Clarity of the Regulation

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed rule clearly stated?
2. Does the proposed rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?
4. Would the regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? How could this description be more helpful in making the proposed rule easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has determined that this proposed rule is administrative in nature and involves only procedural changes addressing segregation requirements. This proposed rule would result in no new surface disturbing activities and therefore would have no effect on ecological or cultural resources. Potential effects from associated wind and/or solar ROWs would be analyzed as part of the site-specific NEPA analysis for those activities. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The proposed rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Pursuant to Council on Environmental Quality regulation (40 CFR 1508.4) and the environmental policies and procedures of the Department, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. We anticipate that the proposed rule could potentially affect a few entities that might otherwise have located new mining claims on public lands covered by a wind or solar energy facility ROW application currently pending or filed in the future. We further anticipate that most of these entities would be small entities as defined by the Small Business Administration; however, we do not expect the potential impact to be significant. Therefore, the BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Small Business Regulatory Enforcement Fairness Act

For the same reasons as discussed under the Executive Order 12866, Regulatory Planning and Review section of this preamble, this proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2). That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not

[7] With respect to any particular Plan of Operation or Notice that might be filed in areas segregated under the rule, the BLM would separately determine, on a case-by-case basis and consistent with the requirements of 43 CFR 3809.100(a), whether to require a validity determination for such Plan or Notice.

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. A copy of the analysis that supports this determination is available at the office listed under the **ADDRESSES** section of this preamble.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments, in the aggregate, or the private sector of $100 million or more per year; nor would it have a significant or unique effect on State, local, or Tribal governments. The rule would impose no requirements on any of these entities. Therefore, the BLM does not need to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This proposed rule is not a government action that interferes with constitutionally protected property rights. This proposed rule would set out a process, by publication of a notice in the **Federal Register**, that could be used to segregate public lands included within a pending or future solar or wind energy generation ROW application, or public lands identified by the BLM for a potential future wind or solar energy generation ROW authorization. This segregation would remove public lands from the operation of the public land laws, including the location of new mining claims under the Mining Law, but not the Mineral Leasing Act or the Materials Act for a period of up to 2 years, with the authority to extend the segregation for up to an additional 2-year period, in order to promote the orderly administration of the public lands. Because any segregation under this proposed rule would be subject to valid existing rights, it does not interfere with constitutionally protected property rights. Therefore, the Department has determined that this proposed rule does not have significant takings implications and does not require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule would not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local government entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this proposed rule does not include policies that have Tribal implications. This rule would apply exclusively to lands administered by the BLM. It would not be applicable to and would have no bearing on trust or Indian lands or resources, or on lands for which title is held in fee status by Indian Tribes, or on U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing this proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this proposed rule is not likely to have a significant adverse effect on energy supply, distribution, or use, including a shortfall in supply, price increase, or increased use of foreign supplies. The BLM's authority to segregate lands under this rule would be of a temporary nature for the purpose of encouraging the orderly administration of public lands, including the generation of electricity from wind and solar resources on the public lands. Any increase in energy production as a result of this rule from wind or solar sources is not easily quantified, but the proposed rule is expected to relieve obstacles and hindrances to energy development on public lands.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule would not impede the facilitation of cooperative conservation. The rule takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal author of this rule is Jeff Holdren, Realty Specialist, Division of Lands and Realty, assisted by the Division of Regulatory Affairs, Washington Office, Bureau of Land Management, Department of the Interior.

List of Subjects

43 CFR Part 2090

Airports; Alaska; Coal; Grazing lands; Indian lands; Public lands; Public lands—classification; Public lands—mineral resources; Public lands—withdrawal; Seashores.

43 CFR Part 2800

Communications; Electric power; Highways and roads; Penalties; Pipelines; Public lands—rights-of-way; Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authorities stated below, the BLM proposes to amend 43 CFR parts 2090 and 2800 as follows:

Subchapter B—Land Resource Management (2000)

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 continues to read as follows:

Authority: 43 U.S.C. 1740.

Subpart 2091—Segregation and Opening of Lands

2. Amend § 2091.3–1 by adding a new paragraph (e) to read as follows:

§ 2091.3–1 Segregation

* * * * *

(e)(1) The Bureau of Land Management may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included in a right-of-way application for the generation of electrical energy under 43 CFR subpart 2804 from wind or solar sources. In addition, the Bureau of Land Management may also segregate public lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources. Upon segregation, such lands will not be subject to appropriation under the public lands laws, including location under the General Mining Law, but not the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The Bureau of Land Management will effect such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The effective date of segregation is the date of publication of the notice in the **Federal Register** and the date of termination of the segregation is the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation unless, on a case-by-case basis, the Bureau of Land Management State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If an extension is determined to be necessary, the Bureau of Land Management will publish a notice in the **Federal Register**, prior to expiration of the initial segregation period that the segregation is being extended for up to 2 years. Only one extension may be authorized; the total segregation period therefore cannot exceed 4 years.

PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

3. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, and 1764.

Subpart 2804—Applying for FLPMA Grants

4. Amend § 2804.25 by adding a new paragraph (e) to read as follows:

§ 2804.25 How will BLM process my application?

* * * * *

(e)(1) The BLM may segregate, if it finds it to be necessary for the orderly administration of the public lands, lands included within a right-of-way application under 43 CFR subpart 2804 for the generation of electricity from wind or solar sources. In addition, the BLM may segregate public lands that it identifies for potential rights-of-way for electricity generation from wind or solar sources under the BLM's right-of-way regulations. Upon segregation, such lands will not be subject to appropriation under the public land laws, including location under the General Mining Law, but not from the Mineral Leasing Act of 1920 (30 U.S.C. 181 *et seq.*) or the Materials Act of 1947 (30 U.S.C. 601 *et seq.*). The BLM will effect such segregation by publishing a **Federal Register** notice that includes a description of the lands covered by the segregation. The Bureau of Land Management may impose a segregation in this way on both pending and new right-of-way applications.

(2) The segregative effect of the **Federal Register** notice terminates on the date that is the earliest of the following:

(i) Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way;

(ii) Automatically at the end of the segregation period provided for in the **Federal Register** notice initiating the segregation, without further action by the authorized officer; or

(iii) Upon publication of a **Federal Register** notice of termination of the segregation.

(3) The segregation period may not exceed 2 years from the date of publication of the **Federal Register** notice initiating the segregation unless, on a case by case basis, the BLM State Director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If an extension is determined to be necessary, the BLM will publish a notice in the **Federal Register,** prior to expiration of the initial segregation period that the segregation is being extended for up to 2 years. Only one extension may be authorized; the total segregation period therefore cannot exceed 4 years.

Dated: April 6, 2011.

Wilma A. Lewis,

Assistant Secretary of the Interior, Land and Minerals Management.

[FR Doc. 2011–10017 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53

[FAR Case 2011–001; Docket 2011–0001; Sequence 1]

RIN 9000–AL82

Federal Acquisition Regulation; Organizational Conflicts of Interest

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), provide additional coverage regarding contractor access to nonpublic information, and add related provisions and clauses. Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 required a review of the FAR coverage on OCIs. This proposed rule was developed as a result of a review conducted in accordance with Section 841 by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) and the Office of Federal Procurement Policy (OFPP), in consultation with the Office of Government Ethics (OGE). This proposed rule was preceded by an Advance Notice of Proposed Rulemaking (ANPR), under FAR Case 2007–018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before June 27, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2011–001 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2011–001" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2011–001." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2011–001" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2011–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, at (202) 501–2658, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2011–001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest

The integrity of the Federal acquisition process is protected, in part, by OCI rules currently found in FAR subpart 9.5. These rules are designed to help the Government in identifying and addressing circumstances in which a Government contractor may be unable to render impartial assistance or advice to the Government or might have an unfair competitive advantage based on unequal access to information or prior involvement in setting the ground rules for an acquisition. FAR 9.504 directs contracting agencies to "identify and evaluate potential OCIs as early in the acquisition process as possible" and "avoid, neutralize, or mitigate significant potential conflicts before contract award."

FAR coverage on OCIs has remained largely unchanged since the initial publication of the FAR in 1984. The FAR coverage was adapted from an appendix to the Defense Acquisition Regulation, which dated back to the 1960s.

B. Origins of This Case

1. *Changes in Government and Industry.* In recent years, a number of trends in acquisition and industry have led to the increased potential for OCIs, including—

- Industry consolidation;
- Agencies' growing reliance on contractors for services, especially where the contractor is tasked with providing advice to the Government; and
- The use of multiple-award task- and delivery-order contracts, which permit large amounts of work to be awarded among a limited pool of contractors.

2. *SARA Panel.* In its 2007 report, the Acquisition Advisory Panel (established pursuant to section 1423 of the Services Acquisition Reform Act of 2003) (SARA Panel) concluded that the FAR does not adequately address "the range of possible conflicts that can arise in modern Government contracting." The SARA Panel observed that the FAR provides no detailed guidance to contracting officers regarding how they should detect and mitigate actual and potential OCIs and called for improved guidance, to possibly include a standard OCI clause or set of clauses. See Report of the Acquisition Advisory Panel (January 2007), available at *https://www.acquisition.gov/comp/aap/24102_GSA.pdf,* at pp. 405–407, 417, 422.

3. *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009.* Congress subsequently directed, in Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), a review of the conflicts of interest provisions in the FAR. Section 841 required that appropriate revisions, including contract clauses, be developed as necessary, pursuant to that review.

C. Evaluation of FAR Subpart 9.5

The Councils have worked with OFPP and consulted with OGE to evaluate FAR subpart 9.5. This evaluation was informed, in part, by the following:

1. A review of recent case law and opinions from the Government Accountability Office (GAO) and Court of Federal Claims (CoFC). Collectively, this review indicated that, when addressing OCIs, agencies do not always perform adequate, case-by-case, fact-specific analysis.

2. The findings of the SARA Panel, which concluded that contracting officers and agencies have encountered difficulties implementing appropriate OCI avoidance and mitigation measures.

3. Responses to a 2008 ANPR which sought comment on whether the current guidance on OCIs adequately addresses the current needs of the acquisition community or whether providing standard provisions and/or clauses might be beneficial. The ten respondents to the ANPR offered a range of views, from the complete rewrite of FAR subpart 9.5, to maintaining the current coverage largely as is. Several respondents encouraged the Councils to adopt already-existing agency-level regulations, while two respondents stated that the regulations should consider providing Governmentwide standard clauses that allow agencies to add more stringent requirements, if needed, on a procurement-specific basis. One respondent suggested that any change to FAR subpart 9.5 should be consistent with existing case law on OCIs, as developed by GAO and the CoFC. Copies of all responses may be obtained at *http://www.regulations.gov.*

4. Public comments provided in response to Defense Federal Acquisition Regulation Supplement (DFARS) Proposed Rule 2009–D015, published in the **Federal Register** on April 22, 2010 (see 75 FR 20954–20965). DFARS Proposed Rule 2009–D015 was designed to implement section 207 of the Weapons System Acquisition Reform Act of 2009 (WSARA) (Pub. L. 111–23), which requires DoD to revise the DFARS to provide uniform guidance and tighten existing rules regarding OCIs concerning major defense acquisition programs. To implement section 207 in the most effective manner possible, DoD concluded that the basic principles, policies, and practices governing OCIs must be clearly understood. DoD reviewed the FAR coverage and issued the proposed rule that clarified the prescribed general rules and procedures for identifying, evaluating, and resolving OCIs. As with the ANPR, respondents to the DFARS proposed rule provided a range of views regarding the proposed coverage.

II. Overview

Based on their review, the Councils and OFPP reached the following main conclusions regarding OCIs:

A. Opportunity for Public Comment on Two Alternative OCI Frameworks

Because the proposed DFARS rule (2009–D015) not only addressed the requirements of the WSARA but also contained a comprehensive OCI framework, the public now has a unique opportunity to comment on two distinct options for revising the regulatory coverage on OCIs. To this end, this proposed rule diverges substantially from the framework presented in the proposed DFARS rule, and we are seeking specific feedback regarding which course of action, or whether some combination of the two, is preferable.

B. OCI Case Law

The fundamental approach provided in the proposed DFARS rule is sound and provides a regulatory framework that thoroughly implements the established OCI case law. However, the fact that the OCI regulations are not primarily based in statute means that revisions to the regulations need not conform with existing case law. Rather, substantive departures from the case law should be considered if such changes will produce an OCI framework that is clearer, easier to implement, and better suited to protecting the interests of the Government.

C. Similarities of Proposed FAR Rule to Proposed DFARS Rule

Both this proposed FAR rule and the proposed DFARS rule propose coverage that recognizes the present-day challenges faced by acquisition officials in identifying and addressing OCIs in the procurement of products and services to satisfy agency requirements. In particular, both this proposed rule and the proposed DFARS framework—

1. Reorganize and move OCI coverage to FAR part 3, so that OCIs are addressed along with related issues, namely other business practices and personal conflicts of interest (on which final coverage is pending under FAR Case 2008–025);

2. Clarify key terms and provide more detailed guidance regarding how contracting officers should identify and address OCIs while emphasizing that each OCI case may be unique and therefore must be approached with thoughtful consideration;

3. Provide standard OCI clauses, coupled with the opportunity for contracting officers to tailor the clauses as appropriate for particular circumstances; and

4. Address unique policy issues and contracting officer responsibilities associated with OCIs arising in the context of task- and delivery-order contracts.

D. Differences Between Proposed FAR Rule and Proposed DFARS Rule

The coverage in this proposed rule differs from that provided by the framework presented in the DFARS rule by—

1. Providing an analysis of the risks posed by OCIs, and the two types of harm that can come from them, *i.e.,*—

- Harm to the integrity of the competitive acquisition system; and
- Harm to the Government's business interests;

2. Recognizing that harm to the integrity of the competitive acquisition system affects not only the Government, but also other vendors, in addition to damaging the public trust in the acquisition system. The risk of such harm must be substantially reduced or eliminated. In contrast, the risk of harm to the Government's business interests may sometimes be assessed as an acceptable performance risk;

3. Moving coverage of unequal access to nonpublic information and the requirement for resolving any resulting unfair competitive advantage out of the domain of OCIs and treating it separately in FAR part 4. Competitive integrity issues caused by unequal access to nonpublic information are often unrelated to OCIs. Therefore, treating this topic independently will allow for more targeted coverage that properly addresses the specific concerns involved in such cases; and

4. Adding broad coverage regarding contractor access to nonpublic information, to provide a more detailed framework in which to address the topic of unequal access to nonpublic information.

III. Proposed OCI Coverage

The Councils propose the following FAR coverage on OCIs:

A. Placement of Coverage in the FAR

As noted above, OCIs are currently addressed in FAR subpart 9.5, which deals with contractor qualifications. While the ability to provide impartial advice and assistance is an important qualification of a Government contractor, the larger issues that underlie efforts to identify and address OCIs are more directly associated with some of the business practices issues discussed in FAR part 3. For this reason, the Councils propose to relocate the FAR coverage on OCIs from FAR subpart 9.5 to a new FAR subpart 3.12.

B. Changes To Provide Greater Clarity of Purpose and Policy

This proposed rule makes the following changes to clarify OCI policy:

1. Definitions

a. *Organizational Conflict of Interest.* The proposed FAR rule establishes a clearer definition for "organizational conflict of interest" (which is included in FAR part 2 and applies throughout the FAR). The definition of "organizational conflict of interest" is refined to reflect the two types of situations that give rise to OCI concerns.

b. *Address.* The verb "address" is defined in FAR subpart 3.12, for the purposes of the subpart, to provide a summary term for the various approaches for dealing with the risks and preventing the harms that may be caused by OCIs; each of those approaches is then explained in more detail in FAR 3.1204.

c. *Marketing consultant.* In addition, the existing definition of "marketing consultant" in FAR subpart 9.5 is removed as unnecessary because the proposed coverage is expanded beyond contracts for these entities.

2. *Policy.* Within the new policy section at FAR 3.1203, the proposed rule explains the harm OCIs can cause and the actions the Government must take to address the risks of such harm. This involves an expanded discussion of the two types of harm that OCIs cause to the procurement system—harm to the integrity of the competitive acquisition process and harm to the Government's business interests.

a. *Harm to the Integrity of the Competitive Acquisition Process.* In cases where there is a risk of harm to the integrity of a competitive acquisition process, both the Government's interests and the public interest in fair competitions are at risk. For this reason, such risks must be eliminated to the maximum extent possible. In the extremely rare case that such a risk cannot be eliminated, but award is nonetheless necessary to meet the Government's needs, a waiver provision that requires approval at the head of the contracting activity level or above is provided.

b. *Harm to the Government's Business Interests.* In cases where the potential harm from an OCI threatens only the Government's business interests, it may be appropriate to accept this potential harm as a performance risk. Acceptance of performance risk represents a novel means of addressing OCIs and will often only be appropriate after other steps to reduce the risk have been taken, either by the contractor (*e.g.,* implementation of a mitigation plan) or by the Government (*e.g.,* additional contract management steps or oversight).

C. Changes To Improve Policy Implementation

This proposed rule assists contracting officers in implementing the Government's OCI policy by amending existing FAR coverage in two ways: consolidating the contracting officer's responsibilities regarding OCIs; and providing standard, but customizable, solicitation provisions and contract clauses related to OCIs.

1. *Consolidated Discussion of Contracting Officer Responsibilities.* This proposed rule creates a new section FAR 3.1206 that provides a consolidated discussion of contracting officer responsibilities, including the steps a contracting officer must take during the different phases of an acquisition to identify and address OCIs.

- FAR section 3.1206–2 addresses OCI-related responsibilities associated with presolicitation activities and requires the contracting officer to determine whether an acquisition has the potential to give rise to an OCI early enough in the acquisition process to include an appropriate provision in the solicitation, if necessary.
- FAR section 3.1206–3 provides guidance related to evaluating information from the offeror and other sources to determine if an OCI is present during the evaluation phase and to then address or waive any OCI before making a contract award.
- FAR section 3.1206–4 addresses OCI-related responsibilities associated with contract award.
- FAR section 3.1206–5 addresses task- and delivery-order contracts, and requires the contracting officer to consider OCIs both at the time of award and at the time of issuance of each order.
  - For interagency acquisitions where the ordering (customer) agency places orders directly under another agency's contract (a "direct acquisition"), the ordering agency would be responsible for addressing OCIs.
  - For interagency acquisitions where the servicing agency performs acquisition activities on the requesting agency's behalf (an "assisted acquisition"), the interagency agreement entered into between the servicing and requesting agency to establish the terms and conditions of the assisted acquisition would need to identify which party is responsible for carrying out these responsibilities.

By providing a more complete description of the steps involved in addressing OCIs, the rule will better equip contracting officers to identify conflicts and work with contractors to address them. This approach should also help to address the criticism with current FAR coverage that describing OCIs only through examples misleads contracting officers to believe that OCIs do not exist in contract actions that do not fall within the scope of an identified example.

2. *New Solicitation Provision and Contract Clauses Related to OCIs.* This proposed rule contains a new solicitation provision and three new contract clauses related to OCIs. Existing FAR coverage anticipates appropriate handling of OCI issues through solicitation provisions and contract clauses, but does not provide a standard format (*see* FAR 9.507). The Councils determined that it was desirable to provide contracting officers with standard language that can be used or tailored as appropriate. The Councils used the requirements currently in FAR 9.506 and 9.507 as the basis for the proposed provision and clauses on OCI, providing specific fill-ins the contracting officer must complete, and language that incorporates any mitigation plan by reference.

The proposed solicitation provision and clauses are as follows:

- FAR 52.203–XX, Notice of Potential Organizational Conflict of Interest. This provision—
  - References the definition of "organizational conflict of interest;"
  - Provides notice to offerors that the contracting officer has determined that the nature of the work is such that OCIs may result from contract performance;
  - Requires an offeror to disclose all relevant information regarding any OCI (including active limitations on future contracting), and to represent, to the best of its knowledge and belief, that it has disclosed all relevant information regarding any OCI;
  - Requires an offeror to explain the actions it intends to use to address any OCI, *e.g.,* submit a mitigation plan if it believes an OCI may exist or agree to a limitation on future contracting; and
  - Identifies the clauses that may be included in the resultant contract, depending upon the manner in which the OCI is addressed (*i.e.,* FAR 52.203–YY or 52.203–YZ, described below);
- FAR 52.203–ZZ, Disclosure of Organizational Conflict of Interest After Contract Award. The Councils recognize that events may occur during the performance of a contract that give rise to a new conflict, or that a conflict might be discovered only after award has been made. This clause, which is included in solicitations and contracts when the solicitation includes the provision FAR 52.203–XX, Notice of Potential Organizational Conflicts of Interest, includes by reference the definition of "organizational conflict of interest" and requires the contractor to make a prompt and full disclosure of any new or newly discovered OCI.
- FAR 52.203–YY, Mitigation of Organizational Conflicts of Interest. This clause is generally intended to be used when the contract may involve an OCI that can be addressed by an acceptable contractor-submitted mitigation plan prior to contract award. The clause—
  - Includes a reference to the definition of "organizational conflict of interest;"
  - Incorporates the mitigation plan in the contract;
  - Addresses changes to the mitigation plan;
  - Addresses noncompliance with the clause or with the mitigation plan; and
  - Requires flowdown of the clause.
- FAR 52.203–YZ, Limitation of Future Contracting. This clause is intended for use when the contracting officer decides to address a potential conflict of interest through a limitation on future contracting. The contracting officer must fill in the nature of the limitation on future contractor activities and the length of any such limitation.

D. Other Remarks

In addition to the changes described above, the Councils note the following proposed coverage:

- This rule continues to apply to contracts with both profit and non-profit organizations (current FAR 9.502(a)).
- This rule does not exclude the acquisition of commercial items, including commercially available off-the-shelf (COTS) items. This proposed rule only requires use of the provision and clauses in solicitations when the contracting officer determines that the work to be performed has the potential to give rise to an OCI. Therefore, use in acquisitions of commercial items, especially COTS items, will probably not be frequent. The Councils decided that allowing this discretion to the contracting officer is better than an outright exclusion of applicability to contracts for the acquisition of commercial items.
- This rule applies to contract modifications that add additional work. The Councils recognize that contracting officers may not be able to identify conflicts arising from all future modifications to a contract at the time of contract award.
- This rule adds a requirement at FAR 7.105(b)(18) to consider OCIs when preparing acquisition plans.

IV. Access to Nonpublic Information

FAR subpart 9.5 and the GAO and CoFC cases interpreting the subpart

currently treat situations involving contractors having an unfair competitive advantage based on unequal access to nonpublic information as OCIs. However, the Councils recognized that these situations do not actually involve conflicts of interest at all, and may arise from circumstances unrelated to conflicts of interest, such as where a former Government employee (who has had access to competitively useful nonpublic information) has been hired by a vendor. Further, the Councils observed that the methods available to resolve situations involving unequal access to information differ from those available to address actual OCIs. For these reasons, the Councils determined that separating the coverage of unfair competitive advantage based on unequal access to nonpublic information from the general coverage of OCIs is a desirable outcome, as it will remove some of the confusion often associated with identifying and addressing OCIs.

In developing coverage to treat situations involving unfair competitive advantage based on unequal access to information, the Councils recognized that much of such access comes from performance on other Government contracts. Accordingly, if appropriate contractual safeguards are established prior to, or at the time of, such access, the number of situations where unequal access to information will taint a competition can be minimized. For this reason, this proposed rule provides a new uniform Governmentwide policy regarding the disclosure and protection of nonpublic information to which contractors may gain access during contract performance. This coverage provides substantial safeguards designed to address some of the concerns created by unequal access to nonpublic information, while leaving it to the contracting officer to determine, for any given acquisition, whether the protections are adequate, or if a situation involving an unfair competitive advantage remains to be resolved. Because protection and release of information are administrative matters, this coverage has been placed in FAR part 4.

The coverage provides—

- A definition of "nonpublic information" to clearly identify the scope of information covered;
- Coverage of contractor access to nonpublic information during the course of contract performance;
- Specific coverage for situations involving unfair competitive advantage based on unequal access to nonpublic information; and
- Appropriate solicitation provisions and contract clauses.

A. Definition

The definition of "nonpublic information" provided by this proposed rule includes information belonging to either the Government or a third party that is not generally made publicly available, *i.e.,* information that cannot be released under the Freedom of Information Act, or information for which a determination has not yet been made regarding ability to release.

B. Contractor Access to Nonpublic Information

The SARA Panel recommended that the Federal Acquisition Regulatory (FAR) Council review existing rules and regulations and, to the extent necessary, create uniform, Governmentwide policy and clauses dealing with protection of nonpublic information. Additionally, a recent GAO report, "Contractor Integrity: Stronger Safeguards Needed for Contractor Access to Sensitive Information" (GAO–10–693), recommended that OFPP act with the FAR Council to provide more thorough protections when contractors are allowed access to sensitive information. These recommendations, combined with the need to provide preventive protections in dealing with cases of unfair competitive advantage based on unequal access to information, have prompted the Councils to develop the coverage in this section.

Traditionally, the Government has relied primarily on civil servants to perform the functions that require access to third-party contract information and other information in the Government's possession that requires protection from unauthorized use and disclosure. However, in recent years, the Government has significantly increased its use of contractors to assist in performing many such functions. In addition, some agencies now utilize contractors to perform research studies that require the contractors to access third-party information. With the increasing need for contractor access to nonpublic information, this rule seeks to establish a uniform, and more streamlined and efficient approach.

The Councils are proposing that contractors should be contractually obligated to protect all nonpublic information to which they obtain access by means of contract performance (whether information from the Government or a third party), with certain exceptions (*e.g.,* the information was already in the contractor's possession) (*see* FAR 52.204–XX(c)). Further, the Councils are proposing that contractors should require all employees who may access nonpublic information to sign nondisclosure agreements and that the obligations arising from these agreements will be enforceable by both the Government and third-party information owners. By implementing these protections as the default position, the proposed approach substantially enhances the protection for third-party and Government information provided by the FAR.

Many contracts of the type described above involve not only multiple subcontractors, but also many lower-tier subcontracts. The current ad hoc approach employed by Government agencies for ensuring that all of these contractors have properly executed nondisclosure agreements among themselves has resulted in the existence of a substantial number of overlapping, but not necessarily uniform, agreements—and oftentimes confusion and misunderstandings between the Government and its contractors. The Councils have determined that the approach of requiring inclusion of an "access" clause to protect information disclosed to a contractor, and a "release" clause to notify third-party information owners of their rights when their information is improperly used or disclosed should provide thorough protection while eliminating the need for many interconnecting nondisclosure agreements.

1. *Access Clause.* The first element of this new approach is the proposed Access clause at FAR 52.204–XX, Access to Nonpublic Information. The purpose of the Access clause is to preclude contractors from using Government or third-party information for any purpose unrelated to contract performance. This clause requires that contractors receiving access to nonpublic information must limit the use of such nonpublic information to the purposes specified in the contract, safeguard the nonpublic information from unauthorized outside disclosure, and inform employees of their obligations and obtain written nondisclosure agreements consistent with those obligations. The clause also sets forth certain exceptions (relating to the applicability of the contractor's obligations), but the exceptions do not apply unless the contractor can demonstrate to the contracting officer that an exception is applicable.

The Access clause is subordinate to all other contract clauses or requirements that specifically address the access, use, handling, or disclosure of nonpublic information. If any restrictions or authorizations in the clause are inconsistent with any other clause or requirement of the contract,

the other clause or requirement takes precedence.

This rule proposes, as the default position, mandatory use of the Access clause in solicitations and contracts when contract performance may involve contractor access to nonpublic information. However, the prescription allows agencies to provide otherwise in their procedures. The Access clause is prescribed on the same basis for use in solicitations and contracts for the acquisition of commercial items and in simplified acquisitions.

2. Alternate to the Access Clause

a. *Alternate I.* Alternate I is prescribed for use if the contracting officer anticipates that there may be a need for executing confidentiality agreements between the contractor and one or more third parties that have provided nonpublic information to the Government. This alternate requires the contractor, if requested by the contracting officer, to negotiate and sign an agreement identical, in all material respects, to the restrictions on use and disclosure of nonpublic information in the Access clause, with each entity that has provided the Government nonpublic information to which the contractor must now have access to perform its obligations under the contract.

b. *Alternate II.* Alternate II is for use if the contracting officer anticipates that the contractor may require access to a third party's facilities or nonpublic information that is not in the Government's possession. This alternate requires the contractor, if requested by the contracting officer, to execute a Government-approved agreement with any party to whose facilities or nonpublic information it is given access, restricting the contractor's use of the nonpublic information to performance of the contract.

3. *Release Clause.* The purpose of the Release clause at FAR 52.204–YY, Release of Nonpublic Information, is to obtain the consent of the original owners of third-party nonpublic information for the Government to release such information to those contractors who need access to it for purposes of contract performance and who have signed up to the conditions of the Access clause.

Unless agency procedures provide otherwise, the contracting officer must use the Release clauses in all solicitations and contracts, including solicitations and contracts for the acquisition of commercial items and below the simplified acquisition threshold.

A solicitation provision at FAR 52.204–XY, Release of Nonpublic Information, that provides similar coverage is prescribed for all solicitations.

C. Unequal Access to Nonpublic Information

1. *Policy.* FAR section 4.402 addresses situations in which access to nonpublic information constitutes a risk to the competitive integrity of the acquisition process. It includes a policy section, expressing the Government's policy that contracting officers must take action to resolve situations where one or more offerors hold an unfair competitive advantage. The policy section also states that disqualification of an offeror is the least-favored approach and should only be adopted if no other method of resolution will adequately protect the integrity of the competition.

2. *General Principles.* FAR subsection 4.402–3 contains general principles for determining when access to nonpublic information requires resolution. Specifically, the access must be Government-provided, the access must be unequal (that is, not all of the prospective offerors have access), the information must be competitively useful, and the competitive advantage must be unfair.

3. *Contracting Officer Responsibilities.* FAR subsection 4.402–4 contains details covering contracting officer responsibilities. This begins with requirements to collect information regarding unequal access to nonpublic information, both from within the Government and from offerors. If the contracting officer becomes aware that an offeror may have unequal access to nonpublic information, the rule requires that the contracting officer conduct an analysis, consistent with the general principles discussed above, to determine whether resolution is required. If resolution is not required, the contracting officer simply documents the file. If resolution is required, the contracting officer must take action consistent with the section detailing appropriate resolution techniques, which consist of information sharing, mitigation through the use of a firewall, or disqualification.

4. *Solicitation Provision.* FAR subsection 4.402–5 prescribes a solicitation provision, FAR 52.204–YZ, Unequal Access to Nonpublic Information, that requires offerors to identify, early in the solicitation process, whether it or any of its affiliates possesses any nonpublic information relevant to the solicitation and provided by the Government. It also requires that the contractor certify by submission of its offer that, where a mitigation plan involving a firewall is already in place (addressing nonpublic information relevant to the current competition), the offeror knows of no breaches of that firewall.

V. Solicitation of Public Comment

When commenting on the proposed rule, respondents are encouraged to offer their views on the following questions:

A. Do the policy and associated principles set forth in the proposed rule provide an effective framework for evaluating and addressing conflicts of interest?

B. Is the definition of "organizational conflict of interest" sufficiently comprehensive to address all potential forms of such conflicts?

C. Do the enumerated techniques for addressing OCIs adequately address the Government's interests? Are any too weak or overbroad? Are there other techniques that should be addressed?

D. Does the rule adequately address the potential conflicts that may arise for companies that have both advisory and production capabilities? What, if any, improvements might be made?

E. Do the proposed solicitation provisions and contract clauses adequately implement the policy framework set forth in the proposed rule? For example, is a clause limiting future contracting an operationally feasible means of resolving a conflict? Would it be beneficial and appropriate for this information generally to be made publicly available, such as through a notice on FedBizOpps? Do the solicitation provisions and contract clauses afford sufficient flexibility to help an agency meet its individual needs regarding a prospective or actual conflict?

F. Is there a need for additional guidance to supplement the proposed FAR coverage of OCIs (*e.g.,* guidance addressing the management of OCI responsibilities)? If so, what points should the guidance make?

G. Is the framework presented by this proposed rule preferable to the framework presented in the DFARS Proposed Rule 2009–D015 published in the **Federal Register** on April 22, 2010 (75 FR 20954–20965)? Why or why not? Would some hybrid of the two proposed rules be preferable?

H. Does the proposed rule strike the right balance between providing detailed guidance for contracting officers and allowing appropriate flexibility for dealing with the variety of forms that organizational conflicts of interest take and the variety of circumstances under which they arise?

Are there certain types of contracts, or contracts for certain types of services,

that warrant coverage that is more strict than that provided by the proposed rule?

VI. Executive Orders 12866 and 13563

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In accordance with Executive Order 13563, Improving Regulation and Regulatory Review, dated January 18, 2011, DoD, GSA, and NASA determined that this rule is not excessively burdensome on the public, and is consistent with Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, which required a review of the FAR coverage on OCIs.

VII. Regulatory Flexibility Act

A. The proposed changes are not expected to result in a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because—

1. The requirements of FAR subpart 3.12 do not differ from the burden currently imposed on offerors and contractors by FAR subpart 9.5 and the requirements of subpart 3.12 are not significantly burdensome. It is good business practice to have procedures in place to identify potential organizational conflicts of interest and to have prepared mitigation plans for obvious conflicts. This proposed rule has also reduced the potential burden by—

a. Not including a certification requirement; and

b. Providing for avoidance, neutralization, or mitigation of organizational conflicts or interest or, under exceptional circumstances, waiver of the requirement for resolution.

2. Unless the Access clause is used with Alternate I or Alternate II, this approach standardizes and simplifies the current system of third-party agreements envisioned by FAR 9.505–4. Having each contractor implement specific safeguards and procedures should offer the same or better protection for information belonging to small business entities. Moreover, this rule should ease the burden on most small business entities by not requiring them to enter multiple, interrelated third-party agreements with numerous service contractors. If the Access clause is used with Alternate I or Alternate II, then that is no more burdensome than the current requirements of FAR 9.505–4.

B. However, an Initial Regulatory Flexibility Analysis has nevertheless been prepared and is summarized as follows:

This proposed rule implements Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) by providing revised regulatory coverage on organizational conflicts of interest (OCIs) and unequal access to information. The rule also provides additional coverage regarding contractor access to nonpublic information, and adds related provisions and clauses.

The objective of the rule is to help the Government in identifying and addressing circumstances in which a Government contractor may be unable to render impartial assistance or advice to the Government or might have an unfair competitive advantage based on unequal access to information or prior involvement in setting the ground rules for an acquisition.

In recent years, a number of trends in acquisition and industry have led to the increased potential for OCIs, including—

- Industry consolidation;
- Agencies' growing reliance on contractors for services, especially where the contractor is tasked with providing advice to the Government; and
- The use of multiple-award task- and delivery-order contracts, which permit large amounts of work to be awarded among a limited pool of contractors.

Section 841 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) directed a review of the conflicts of interest provisions in the FAR. Section 841 required that appropriate revisions, including contract clauses, be developed as necessary, pursuant to that review.

Competitive integrity issues caused by unequal access to nonpublic information are often unrelated to OCIs. Therefore, treating this topic independently will allow for more targeted coverage that properly addresses the specific concerns involved in such cases; and including broad coverage of contractor access to nonpublic information will provide a framework for the topic of unequal access to nonpublic information.

An OCI is defined as a situation in which a Government contract requires a contractor to exercise judgment to assist the Government in a matter (such as in drafting specifications or assessing another contractor's proposal or performance) and the contractor or its affiliates have financial or other interests at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the contractor may be improperly influenced by its own interests rather than the best interests of the Government; or a contractor could be viewed as having an unfair competitive advantage in an acquisition as a result of having previously performed work on a Government contract, under circumstances such as those just described, that put the contractor in a position to influence the acquisition. The circumstances that lead to OCIs are most likely to occur in large businesses that have diverse capacity to provide both upfront advice and also a capacity for production. Although a small business might become involved in OCIs through its affiliates, we estimate that the proposed rules on OCIs would not impact a significant number of small entities. Furthermore, this rule is not adding burdens relating to OCIs that are beyond the current expectations of FAR subpart 9.5. It is just providing standard procedures and clauses, rather than requiring each contracting officer to craft unique provisions and clauses appropriate to the situation.

With regard to contractor access to information, the rule will impact entities that have access to nonpublic information in performance of a Government contract. We estimate that about half of the entities impacted will be small entities (estimated at 25,000 small entities). Typical contracts that may provide access to nonpublic information include services contracts such as professional, administrative, or management support or special studies and analyses. Furthermore, small entities that are submitting offers to the Government must inform the Government, prior to submission of offers, if they possess any nonpublic information relevant to the current solicitation (estimated at 5,750 small entities).

This rule requires the following projected reporting burdens for access to information:

a. Provide copy of nondisclosure agreement upon request (6,250 respondents × .5 hours per response = 3,125 hours).

b. Notify contracting officer of violation (250 respondents × 4 hours per response = 1,000 hours).

c. Notify contracting officer if access information that should not have access to (125 respondents × 1 hour per response = 125 hours).

d. Explain in solicitation any unequal access to nonpublic information (5,750

respondents × 3 hours per response = 17,250).

e. Explain if firewall was not implemented, or breached (rare) (10 respondent × 5 hours per response = 50 hours).

We estimate that the respondents will be administrative employees earning approximately $75 per hour (+ .3285 overhead).

This rule overlaps, with other Federal rules: FAR Cases 2007–018, 2007–019, 2008–025, 2009–022, and 2009–030; and DFARS Case 2009–D015.

The Councils identified a significant alternative that would accomplish the objectives of the statute and the policies. See the discussion in the rule preamble about DFARS case 2009–D015.

DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2011–001), in correspondence.

VIII. Paperwork Reduction Act

The proposed changes to the FAR impose a new information collection requirement that requires the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.* Under this proposed rule, an offeror may be required to submit information to identify an OCI and propose a resolution, such as a mitigation plan submitted by the offeror with its proposal. While this requirement existed informally since 1984 in FAR subpart 9.5, it is only now being formalized via the new contract provision and clause at FAR 52.203–XX and FAR 52.203–YY.

A. Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average approximately 4.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

1. Organizational Conflicts of Interest.
Respondents: 30,930.
Responses per respondent: 1.0.
Total annual responses: 30,930.
Preparation hours per response: 6.96.
Total response burden hours: 215,273.

2. Contractor Access to Nonpublic Information.
Respondents: 24,760.
Responses per respondent: 1.
Total annual responses: 24,760.
Preparation hours per response: 2.
Total response burden hours: 49,520.

3. Total.
Respondents: 55,690.
Responses per respondent: 1.
Total annual responses: 55,690.
Preparation hours per response: 4.755.
Total response burden hours: 264,793.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 27, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

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

Requester may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000–0178, Organizational Conflicts of Interest, in correspondence.

List of Subjects in 48 CFR Parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53

Government procurement.

Dated: April 13, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 4, 7, 9, 11, 12, 13, 14, 15, 16, 18, 37, 42, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b)(2) by—

a. Removing from paragraph (3) in the definition "Advisory and assistance services" "(see 9.505–1(b))";

b. Adding, in alphabetical order, the definition "Nonpublic information"; and

c. Revising "Organizational conflict of interest."

The added and revised text to read as follows:

§ 2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Nonpublic information means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

* * * * *

Organizational conflict of interest means a situation in which—

(1) A Government contract requires a contractor to exercise judgment to assist the Government in a matter (such as in drafting specifications or assessing another contractor's proposal or performance) and the contractor or its affiliates have financial or other interests at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the contractor may be improperly influenced by its own interests rather than the best interests of the Government; or

(2) A contractor could have an unfair competitive advantage in an acquisition as a result of having performed work on a Government contract, under circumstances such as those described in paragraph (1) of this definition, that put the contractor in a position to influence the acquisition.

* * * * *

PART 3—BUSINESS ETHICS AND CONFLICTS OF INTEREST

3. Revise part 3 heading to read as set forth above.

4. Revise section 3.000 to read as follows:

§ 3.000 Scope of part.

This part prescribes policies and procedures for addressing issues regarding business ethics and conflicts of interest.

§ 3.603 [Amended]

5. Amend section 3.603 by removing from paragraph (b) "subpart 9.5" and adding "subpart 3.12" in its place.

6. Add subpart 3.12 to read as follows:

Subpart 3.12—Organizational Conflicts of Interest

Sec.

Subpart 3.12—Organizational Conflicts of Interest

§ 3.1200 Scope of subpart.

(a) This subpart prescribes policies and procedures for identifying, analyzing, and addressing organizational conflicts of interest (as defined in 2.101). It implements 41 U.S.C. 2304 and section 841(b)(2) of Public Law 110–417.

(b) This subpart does not address unequal access to nonpublic information, which is addressed in 4.402.

§ 3.1201 Definition.

"*To address,*" as used in this subpart, means to protect the integrity of the competitive acquisition process, as well as the Government's business interests (see 3.1203(a)(2)), by one or more of the following methods:

(1) Avoidance.

(2) Neutralization through limitations on future contracting.

(3) Mitigation of the risks involved.

(4) Assessment that the risk inherent in the conflict is acceptable (either without further action or in conjunction with application of one or more of the other methods listed in paragraphs (a) through (c) of this definition). (See 3.1204.)

§ 3.1202 Applicability.

(a) This subpart—

(1) Applies to contracts and subcontracts with both profit and nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds. Contracts include task and delivery orders and modifications that add work; and

(2) Applies to the acquisition of commercial items, including commercially available off-the-shelf items (see 12.301(d)(3)) if the contracting officer determines that contractor performance of the work may give rise to an organizational conflict of interest.

(b) Although this subpart applies to every type of acquisition, organizational conflicts of interest are more likely to arise when at least one of the contracts involved is for acquisition support services or advisory and assistance services.

(c) Application of this subpart is independent of coverage concerning unequal access to nonpublic information (see 4.402). Contracting officers must consider each issue separately in determining whether steps must be taken to protect the interests of the Government.

(d) This subpart shall not be applied in any manner that conflicts with an agency-specific conflict of interest statute.

§ 3.1203 Policy.

(a) *The Government's interests.* It is the Government's policy to identify, analyze, and address organizational conflicts of interest that might otherwise exist or arise in acquisitions in order to maintain the public's trust in the integrity and fairness of the Federal acquisition system. Organizational conflicts of interest have the potential to undermine the public's trust in the Federal acquisition system because they can impair—

(1) *The integrity of the competitive acquisition process.* The Government has an interest in preserving its ability to solicit competitive proposals and affording prospective offerors an opportunity to compete for Government requirements on a level playing field. In some cases, an organizational conflict of interest will be accompanied by a risk that the conflicted contractor will create for itself, or obtain, whether intentionally or not, an unfair advantage in competing for a future Government requirement. The result may be a seriously flawed competition, which is unacceptable in terms of good governance, fairness, and maintenance of the public trust; and

(2) *The Government's business interests.* As a steward of public funds, the Government has an interest in ensuring both that it acquires products and services that provide the best value to the Government and that the contractor's performance in fulfilling the Government's requirements is consistent with contractual expectations. In many cases, an organizational conflict of interest will be accompanied by a risk that the conflict will affect the contractor's judgment during performance in a way that degrades the value of its services to the Government. This type of risk is most likely to appear when the exercise of judgment is a key aspect of the service that the contractor will be providing.

(b) *Addressing organizational conflicts of interest.* (1) Agencies must examine and address organizational conflicts of interest on a case-by-case basis, because such conflicts arise in various, and often unique, factual settings. Contracting officers shall consider both the specific facts and circumstances of the contracting situation and the nature and potential extent of the risks associated with an organizational conflict of interest when determining what method or methods of addressing the conflict will be appropriate.

(2) If an organizational conflict of interest is such that it risks impairing the integrity of the competitive acquisition process, then the contracting officer must take action to substantially reduce or eliminate this risk.

(3) If the only risk created by an organizational conflict of interest is a performance risk relating to the Government's business interests, then the contracting officer has broad discretion to select the appropriate method for addressing the conflict, including the discretion to conclude that the Government can accept some or all of the performance risk.

(c) *Waiver.* It is the policy of the Government to minimize the use of waivers of organizational conflicts of interest. However, in exceptional circumstances, the agency may grant a waiver in accordance with 3.1205.

§ 3.1204 Methods of addressing organizational conflicts of interest.

Organizational conflicts of interest may be addressed by means of avoidance, limitations on future contracting, mitigation, or the Government's assessment that the risk inherent in the conflict is acceptable. In

some cases, a combination of methods may be appropriate.

§ 3.1204–1 Avoidance.

Avoidance consists of Government action taken in one acquisition that is intended to prevent organizational conflicts of interest from arising in that acquisition or in a future acquisition. In order to successfully implement an avoidance strategy, the contracting officer should work with the program office or requiring activity early in the acquisition process. Methods of avoiding organizational conflicts of interest include, but are not limited to, the following:

(a) Drafting the statement of work to exclude tasks that require contractors to utilize subjective judgment. This strategy may be used to avoid or prevent organizational conflicts of interest both in the instant contract and in future acquisitions. Tasks requiring subjective judgment include—

(1) Making recommendations;

(2) Providing analysis, evaluation, planning, or studies; and

(3) Preparing statements of work or other requirements and solicitation documents.

(b) Requiring the contractor (and its affiliates, as appropriate) to implement structural barriers, internal corporate controls, or both, in order to forestall organizational conflicts of interest that could arise because, for example, the contractor will be participating in preparing specifications or work statements in the performance of the immediate contract. This avoidance method differs from mitigation in that it is used to prevent organizational conflicts of interest from arising in future acquisitions, rather than addressing organizational conflicts of interest in the instant contract.

(c) *Excluding an offeror or offerors from participation in a procurement.* (1) Use of this method may be appropriate when the contracting officer concludes that—

(i) The offeror will have an unfair advantage in the competition because of its prior involvement (or an affiliate's prior involvement) in developing the ground rules for the procurement; or

(ii) The risk that the offeror's judgment or objectivity in performing the proposed work will be impaired because the substance of the work has the potential to affect other of the offeror's (or its affiliates') current or future activities or interests is more significant than the Government is willing to accept.

(2) This approach may be used only if the contracting officer has determined that no less restrictive method for addressing the conflict will adequately protect the Government's interest. This determination must be documented in the contract file.

(3) Before excluding an offeror from participation in a procurement on the basis of an organizational conflict of interest that arises because of work done by an affiliate of the offeror (creating an unfair competitive advantage), the contracting officer shall identify and analyze the corporate and business relationship between the offeror and the affiliate. The contracting officer's efforts should be directed toward understanding the nature of the relationship between the entities and determining whether the risk associated with the organizational conflict of interest can be addressed through mitigation (see 3.1204–3). The contracting officer should, at a minimum, examine whether—

(i) The offeror and affiliate are controlled by a common corporate headquarters;

(ii) The overall corporate organization has established internal barriers, such as corporate resolutions, management agreements, or restrictions on personnel transfers, that limit the flow of information, personnel, and other resources between the relevant entities;

(iii) The offeror and affiliates are separate legal entities and are managed by separate boards of directors;

(iv) The corporate organization has instituted recurring training on organizational conflicts of interest and protections against organizational conflicts of interest; and

(v) The affiliate can influence the offeror's performance of its contractual requirements.

§ 3.1204–2 Limitation on future contracting (neutralization).

(a) A limitation on future contracting allows a contractor to perform on the instant contract but precludes the contractor from submitting offers for (or participating as a subcontractor in) future contracts where the contractor would have an unfair advantage in competing for award (or could provide the prime contractor with such an advantage). The limitation on future contracting effectively "neutralizes" the organizational conflict of interest.

(b) Limitations on future contracting shall be restricted to a fixed term of reasonable duration that is sufficient to neutralize the organizational conflict of interest. The restriction shall end on a specific date or upon the occurrence of an identifiable event.

§ 3.1204–3 Mitigation.

(a)(1) Mitigation is any action taken to reduce the risk that an organizational conflict of interest will undermine the public's trust in the Federal acquisition system.

(2) Mitigation may require Government action, contractor action, or a combination of both.

(b) When this approach is utilized, a Government-approved mitigation plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract. The required complexity of the mitigation plan is related to the complexity of the organizational conflict of interest and the size of the acquisition. While implementation of a mitigation plan may rest largely with a contractor, the Government bears responsibility for ensuring that mitigation plans are properly implemented, and the Government must not leave enforcement to the contractor.

(c) Ways of mitigating organizational conflicts of interest include, but are not limited to, the following:

(1) *Requiring a subcontractor or team member that is conflict-free to perform the conflicted portion of the work on the instant contract.* This technique will not be effective in reducing the risk associated with a conflict unless it is utilized in conjunction with a system of controls that can ensure that the conflicted entity has no input or influence on the work of the subcontractor or team member performing the conflicted portion of the work.

(2) *Requiring the contractor to implement structural or behavioral barriers, internal controls, or both.* (i) This method can be used to lessen the risk that the potentially conflicting financial interests of an affiliate will influence the contractor's exercise of judgment during contract performance. The choice of specific barriers or controls should be based on an analysis of the facts and circumstances of each case. Examples of such methods include, but are not limited to—

(A) An agreement that the contractor's board of directors will adopt a binding resolution prohibiting certain directors, officers, or employees, or parts of the company from any involvement with contract performance;

(B) A condition for a nondisclosure agreement between the contractor performing the contract and all of its affiliates;

(C) A condition that the contractor's board of directors include one or more independent directors who have no prior relationship with the contractor; and

(D) Creation of a corporate organizational conflict of interest compliance official at a senior level to

oversee implementation of any mitigation plan.

(ii) A firewall will often be necessary to implement the controls in the previous paragraph (c)(2)(i) of this subsection. However, a firewall that serves only to limit the sharing of information, by itself, is generally not effective in addressing an organizational conflict of interest.

(3) Obtaining advice from more than one source on a particular issue, so that the Government is not relying solely on the advice of any one of the sources.

3.1204–4 Assessment that risk is acceptable.

(a) The contracting officer shall not use this method of assessment that the risk is acceptable to address conflicts when the conflict could impair the competitive acquisition process (see 3.1203).

(b) The contracting officer may assess that the risk associated with an organizational conflict of interest is acceptable when—

(1) The only risk created by the conflict is a performance risk relating to the business interests of the Government;

(2) The risk is manageable; and

(3) The potential harm to the Government's interest is outweighed by the expected benefit from having the conflicted offeror perform the contract.

(c) This method of addressing conflicts should generally be combined with other methods, particularly mitigation. For example, the contracting officer may require a mitigation plan, and elect to accept the remaining risk if the contracting officer concludes that the mitigation plan does not remove all of the performance risk associated with the conflict.

(d) The contracting officer shall consider all readily available information (see 3.1206–3) before concluding that the risk of harm is acceptable.

(e) All assessments that the risk is acceptable must be in writing, setting forth the extent of the conflict and explaining why it is in the best interest of the Government to accept the risk associated with the conflict.

3.1205 Waiver.

(a) *Authority.* (1) In exceptional circumstances, the agency head may waive the requirement to address an organizational conflict of interest in a particular acquisition, but only if the agency head first determines that—

(i) Mitigation or other means of addressing the organizational conflict of interest are not feasible (*e.g.,* the agency cannot assess the risk as acceptable because the organizational conflict of interest involves an unfair competitive advantage); and

(ii) The waiver is necessary to accomplish the agency's mission.

(2) The agency head shall not delegate this waiver authority below the head of a contracting activity.

(b) *Requirements.* (1) Any waiver shall—

(i) Be in writing;

(ii) Cover only one contract action;

(iii) Describe the extent of the organizational conflict of interest;

(iv) Explain why the waiver is necessary to accomplish the agency's mission; and

(v) Be approved by the appropriate official.

(2) The contracting officer shall include the waiver documentation and decision in the contract file.

3.1206 Contracting officer responsibilities.

3.1206–1 General.

(a) The contracting officer shall assess early in the acquisition process whether contractor performance of the contemplated work is likely to create any organizational conflicts of interest (see 3.1206–2 and 7.105(b)(18)).

(b) The contracting officer shall exercise common sense, good judgment, and sound discretion—

(1) In deciding whether an acquisition may give rise to an organizational conflict of interest; and

(2) In developing an appropriate means for addressing any such conflicts.

3.1206–2 Pre-solicitation responsibilities.

(a) *Initial assessment.* (1) The contracting officer shall review the nature of the work to be performed to decide whether performance by a contractor has the potential to create an organizational conflict of interest (see 3.1202(b)). In addition to evaluating the nature of the work to be performed on the immediate contract, the contracting officer should also consider whether performance of the present contract could cause the contractor to have an organizational conflict of interest in a foreseeable future contract.

(2) As appropriate to the circumstances, the contracting officer should obtain the assistance of the program office, appropriate technical specialists, and legal counsel in identifying the potential for organizational conflicts of interest.

(3) If the contracting officer decides that contractor performance of the contemplated work does not have the potential to create an organizational conflict of interest, the contracting officer shall document in the contract file the rationale supporting the decision.

(4) If the contracting officer decides that contractor performance of the contemplated work has the potential to create an organizational conflict of interest, the contracting officer should consult with the program office or requiring activity to determine whether any organizational conflicts of interest could be avoided by drafting the requirements documents to exclude tasks that require the contractor to exercise subjective judgment during contract performance. If avoiding organizational conflicts of interest is not feasible at this stage, then the contracting officer shall proceed with the pre-solicitation actions described in paragraph (b) of this subsection.

(b) *Pre-solicitation actions.* (1) When assessing the nature and scope of any organizational conflicts of interest that may arise during contract performance and preliminarily considering how best to address any such conflicts, the contracting officer should weigh the following factors to the extent feasible at this pre-solicitation phase:

(i) The extent to which the contract calls for the contractor to exercise subjective judgment and provide advice.

(ii) The extent and severity of the expected impact of the organizational conflict of interest (for example, whether it is expected to occur only once or twice during performance or to impact performance of the entire contract).

(iii) The extent to which the agency has effective oversight controls to ensure that the contractor's actions are unaffected by an organizational conflict of interest during performance.

(iv) Whether the organizational conflict of interest risks creation of an unfair competitive advantage.

(v) The degree to which any impairment of the contractor's objectivity may reduce the value of its services to the agency, and the agency's willingness to accept the performance risk of that impairment.

(2) If the contracting officer concludes that the only risk associated with organizational conflicts of interest is a risk to the Government's business interests, the contracting officer may choose one of the following approaches:

(i) *Include consideration of potential risks associated with organizational conflicts of interest as an evaluation factor in the technical rating.* If the Government determines that treatment of organizational conflicts of interest through use of an evaluation factor is appropriate, an appropriate evaluation factor must be included in the solicitation.

(ii) *Do not include consideration of potential risks associated with organizational conflicts of interest as an evaluation factor in the technical rating.* In this case, the Government will address the performance risks associated with any organizational conflicts of interest outside of the evaluation process and may engage in exchanges with offerors in order to understand the conflicts and assess the feasibility of addressing the risks (*see* 3.1206–3(b)(2)(ii)). Prior to contract award, the source selection team will select the apparent successful offeror independent of any organizational conflict of interest. The contracting officer will then assess whether or not to proceed with award, based on whether any organizational conflict of interest can be addressed (see 3.1206–4(a)). Award to the apparent successful offeror will not be made if any organizational conflict of interest cannot be addressed.

(3) If the contracting officer has decided that contractor performance of the contemplated work has the potential to create an organizational conflict of interest, the contracting officer shall select the appropriate solicitation provisions and contract clauses for the resulting solicitation in accordance with 3.1207.

(i) The contracting officer shall require the program office or requiring activity to identify any contractor(s) that participated in preparation of the statement of work or other requirements documents, including cost or budget estimates. The contracting officer shall review this list to identify the nature and scope of any conflict. The solicitation should, if appropriate, include a provision identifying contractors prohibited from competing as a prime contractor or a subcontractor due to any applicable pre-existing limitations on future contracting.

(ii) The contracting officer shall include in the solicitation a provision and clause as prescribed in 3.1207(a) and 3.1207(b).

(iii) If the contracting officer anticipates that the parties will use a mitigation plan to address an organizational conflict of interest in whole or in part, the contracting officer shall include in the solicitation a clause as prescribed in 3.1207(c).

(iv) When the contemplated work calls for the contractor to exercise subjective judgment or provide advice which may create an unfair competitive advantage, the contracting officer shall include in the solicitation an appropriate limitation on future contracting as prescribed in 3.1207(d).

3.1206–3 Addressing organizational conflicts of interest during evaluation of offers.

(a) *Sources of Information*—(1) *Information from offerors.* The contracting officer shall use information provided by the offerors (*see* 52.203–XX, Notice of Potential Organizational Conflict of Interest) to identify organizational conflicts of interest. However, the contracting officer should not rely solely on this contractor-provided information.

(2) *Other sources of information.* The contracting officer should seek readily available information about the financial interests of the offerors, affiliates of the offerors, and prospective subcontractors from within the Government or from other sources and compare this information against information provided by the offeror.

(i) *Government sources.* Government sources include the files and the knowledge of personnel within—

(A) The contracting office;

(B) Other contracting offices;

(C) The cognizant contract administration, finance, and audit activities; and

(D) The requiring activity.

(ii) *Non-Government sources.* Non-Government sources include, but are not limited to—

(A) Offeror's Web sites;

(B) Trade and financial journals;

(C) Business directories and registers; and

(D) Annual corporate shareholder reports.

(b) *Actions to address organizational conflicts of interest.* (1) Consistent with 3.1206–3(a), the contracting officer should analyze both contractor-provided and otherwise available information in determining how to address any organizational conflicts of interest.

(2) If the acquisition involves contractor-submitted mitigation plans, then the contracting officer shall analyze the feasibility of mitigation of the organizational conflict of interest, including both the expected effectiveness of the conflicted entity's proposed mitigation plan and the Government's ability to monitor and enforce the provisions of the plan.

(i) If organizational conflicts of interest were included as an evaluation factor, then communications between the Government and an offeror that could result in changes to the offeror's mitigation plan will constitute discussions. Changes to an offeror's mitigation plan will likely also lead the Government to reassess the technical rating assigned to the offeror.

(ii) If organizational conflicts of interest were not included as an evaluation factor, then communications between the Government and an offeror regarding the offeror's mitigation plan, will not constitute discussions, unless the communications result in changes to evaluated aspects of the offeror's proposal.

3.1206–4 Contract award.

(a) If organizational conflicts of interest were not considered as an evaluation factor, before withholding award from the apparent successful offeror based on conflict of interest considerations, the contracting officer shall—

(1) Notify the contractor in writing;

(2) Provide the reasons therefore; and

(3) Allow the contractor a reasonable opportunity to respond.

(b) Except as provided in paragraphs (c) and (d) of this subsection, the contracting officer shall award the contract to the apparent successful offeror only if all organizational conflicts of interest have been addressed.

(c) If the contracting officer finds that it is in the best interest of the Government to award the contract notwithstanding an unaddressed conflict of interest, a request for waiver shall be submitted in accordance with 3.1205.

(d) For task- or delivery-order contracts or blanket purchase agreements, the contracting officer shall attempt to identify all organizational conflict of interest issues at the time of award of the basic task- or delivery-order contract or blanket purchase agreement. To the extent an organizational conflict of interest can be identified at the time of award of the underlying vehicle, the contracting officer shall include a mitigation plan or limitation on future contracting in the basic contract or agreement, unless the contracting officer decides to accept the risk associated with the conflict without any such actions.

3.1206–5 Issuance of task or delivery orders or blanket purchase agreement calls.

(a) The contracting officer shall consider organizational conflicts of interest at the time of issuance of each order (going through the steps comparable to those in 3.1206–2, except that there is no solicitation involved in issuance of orders). If procedures for addressing an organizational conflict of interest are in the basic task- or delivery-order contract or blanket purchase agreement at the time of its award, the contracting officer may need to appropriately tailor the procedures when issuing an order.

(b) For interagency acquisitions that are facilitated through task- or delivery-

order contracts, including the Federal Supply Schedules—

(1) If the order is placed as a direct acquisition, the contracting officer for the ordering agency is responsible for determining if a mitigation plan is required, developing a Government-approved plan, if necessary, and administering the plan, if one is developed; or

(2) If the order is placed as an assisted acquisition, the servicing agency and requesting agency shall identify which agency is responsible for the actions identified in paragraph (a) of this section and reflect this understanding in their interagency agreement.

3.1207 Solicitation provision and contract clauses.

(a)(1) The contracting officer shall include a solicitation provision substantially the same as 52.203–XX, Notice of Potential Organizational Conflict of Interest, upon determining that contractor performance of the work may give rise to organizational conflicts of interest.

(2) The contracting officer shall fill in paragraph (b)(2) of the provision, if the program office or requiring activity has identified any contractors that participated in preparation of the statement of work or other requirements documents, including cost or budget estimates.

(b) The contracting officer shall include in solicitation and contracts a clause substantially the same as 52.203–ZZ, Disclosure of Organizational Conflict of Interest after Contract Award, when the solicitation includes the provision 52.203–XX, Notice of Potential Organizational Conflict of Interest.

(c) The contracting officer shall include in solicitations and contracts a clause substantially the same as 52.203–YY, Mitigation of Organizational Conflicts of Interest, when the contract may involve an organizational conflict of interest that can be addressed by an acceptable contractor-submitted mitigation plan prior to contract award.

(d) The contracting officer shall include in solicitations and contracts a clause substantially the same as 52.203–YZ, Limitation on Future Contracting, when the method of addressing the organizational conflict of interest will involve a limitation on future contracting.

(1) The contracting officer shall fill in the nature and duration of the limitation on future contractor activities in paragraph (a) of the clause.

(2) The contracting officer shall ensure that the duration of the limitation is sufficient to neutralize any unfair competitive advantage.

PART 4—ADMINISTRATIVE MATTERS

7. Revise the heading of subpart 4.4 to read as follows:

Subpart 4.4—Safeguarding Information Within Industry

8. Add sections 4.401 through 4.401–4 to read as follows:

4.401 Contractor access to nonpublic information.

4.401–1 Scope.

This section prescribes policies and procedures applicable to contracts that may require, authorize, or permit contractor access to nonpublic information during contract performance.

4.401–2 Policy.

It is the Government's policy—

(a) To preclude contractor use or disclosure of nonpublic information for any purpose unrelated to contract performance;

(b) To ensure that the contractor does not obtain any unfair competitive advantage by virtue of its access to nonpublic information (see 4.402); and

(c) To allow agencies discretion to prescribe more restrictive policies and regulations regarding the release and disclosure of nonpublic information than are established in this subpart (*e.g.,* limitations on reassignment of personnel, more stringent notification requirements in cases of unauthorized disclosure, etc.).

4.401–3 Restrictions on access to nonpublic information.

(a) The contracting officer shall not permit contractor access to nonpublic information unless—

(1) The Government is authorized to permit such access, *e.g.,* under subpart 24.2.

(2) The access is necessary for performance of the contract; and

(3) Access is limited to persons who require access to that information to perform the contract.

(b) If a contractor reports an unauthorized disclosure or misuse of information in accordance with paragraph (b)(2)(vii) of 52.204–XX, Access to Nonpublic Information, the contracting officer shall—

(1) Review the actions taken by the contractor;

(2) Determine whether any action taken by the contractor has addressed the situation satisfactorily; and

(3) If the contracting officer determines that the contractor has not addressed the situation satisfactorily, take any appropriate action in consultation with agency legal counsel.

4.401–4 Solicitation provision and contract clauses.

Unless agency procedures provide otherwise—

(a)(1) The contracting officer shall insert the clause at 52.204–XX, Access to Nonpublic Information, in solicitations and contracts when the contractor (or its subcontractors) may have access to nonpublic information.

(2) If the contracting officer decides that due to the contract requirements—

(i) There may be a need for executing confidentiality agreements between the contractor and one or more third parties that have provided information to the Government, insert the clause with its Alternate I.

(ii) The contractor may require access to a third party's facilities or proprietary information that is not in the Government's possession, insert the clause with its Alternate II.

(b) The contracting officer shall insert the provision at 52.204–XY, Release of Pre-Award Information, in all solicitations.

(c) The contracting officer shall insert the clause at 52.204–YY, Release of Nonpublic Information, in all solicitations and contracts.

4.402 through 4.404 [Redesignated as 4.403–1 through 4.403–3]

9a. Redesignate sections 4.402 through 4.404 as sections 4.403–1 through 4.403–3, respectively.

9b. Add new sections 4.402 and 4.403 to read as follows:

4.402 Unequal access to nonpublic information.

4.402–1 Scope.

This section prescribes policies and procedures for identifying and resolving situations in which an offeror's access to nonpublic information provides the offeror with an unfair competitive advantage.

4.402–2 Policy.

(a) Because an unfair competitive advantage held by one or more offerors risks tainting the integrity of the competitive acquisition process, the Government must take action to resolve any situations in which an offeror has obtained an unfair competitive advantage because of its unequal access to nonpublic information.

(b) When an offeror has an unfair competitive advantage because of unequal access to nonpublic information, the Government shall disqualify the offeror from a

competition only when no other method of resolution is appropriate (see 4.402–4(c)).

(c) In competing for follow-on requirements, incumbent contractors will often have a natural advantage that is based on their experience, insights, and expertise rather than any unequal access to nonpublic information. This type of competitive advantage is not considered unfair. This situation must be distinguished from situations in which an incumbent contractor also had access to nonpublic information that could provide it, in a future acquisition, a competitive advantage that is unfair.

4.402–3 General principles.

An offeror's unequal access to nonpublic information may give it an unfair competitive advantage with respect to a particular acquisition. However, not all access to nonpublic information is unequal and, even where access may be unequal, such access will not always result in the offeror obtaining an unfair competitive advantage. Contracting officers shall consider the following factors when determining whether a particular situation involving offeror access to nonpublic information requires resolution:

(a) *Whether access to the nonpublic information was provided by the Government.* (1) Nonpublic information can come to an offeror from the Government either—

(i) Directly, through, or in connection with, performance on another Government contract; or

(ii) Indirectly, through sources such as former Government employees or employees of other contractors or subcontractors who received the nonpublic information from the Government.

(2) The Government has not provided access to nonpublic information, even indirectly, when an offeror gains access to nonpublic information through market research efforts or by way of private-sector business contacts.

(3) If an offeror gained access to the nonpublic information at issue in a particular situation through a source other than the Government, then the contracting officer need not take steps to resolve the situation.

(b) *Whether the nonpublic information (although provided by the Government) is available to all potential offerors.* If the nonpublic information is otherwise available to all potential offerors, then—

(1) The offeror's access to the information is not unequal; and

(2) The contracting officer need not take steps (other than potentially sharing the information with all offerors, *see* 4.402–4(c)) to resolve the situation.

(c) *Whether having unequal access to the nonpublic information would be competitively useful to an offeror responding to a solicitation.* (1) In assessing whether nonpublic information would be competitively useful to an offeror, the contracting officer should make a reasonable effort to consult with people with knowledge of the market and the industry.

(2) If the nonpublic information to which an offeror has or had access is not competitively useful, then the contracting officer need not take steps to resolve the situation.

4.402–4 Contracting officer responsibilities.

(a) *Sources of information.* (1) During acquisition planning, the contracting officer shall ask the relevant contracting activity and requiring activity (as appropriate) to examine whether any potential offerors may have had Government-provided access (*see* 4.402–3(a)) to nonpublic information relevant to the acquisition.

(2) When initially announcing an acquisition, the contracting officer shall include a statement asking that potential offerors indicate, as early as possible, if they have or had Government-provided access (*see* 4.402–3(a)) to any nonpublic information relevant to the acquisition.

(i) For contract actions, this statement shall be included in the sources sought notification.

(ii) For orders placed against multiple-award task- and delivery-order contracts or blanket purchase agreements, this statement shall be included in the first announcement to contract-holders regarding the order.

(iii) For Federal Supply Schedule orders, this statement shall be included in the request for quote.

(3) As prescribed at 4.402–5, the contracting officer shall include in the solicitation the provision requiring offerors to state whether they are aware of anyone in their corporate organization, including affiliates, who has gained access to nonpublic information relevant to the acquisition that was made available by the Government.

(b) *Analysis.* (1) If the Contracting Officer is aware that one or more offerors have or had access to nonpublic information provided by the Government, the contracting officer shall determine whether resolution is required. Consistent with the general principles provided in 4.402–3, the contracting officer must resolve the situation (taking into consideration the policy at 4.402–2(b)) if—

(i) The nonpublic information is available to some, but not all, potential offerors;

(ii) The nonpublic information would be competitively useful in responding to a solicitation; and

(iii) The advantage afforded to the contractor by its access to the nonpublic information is unfair.

(2) If resolution is not required, the Contracting Officer shall document the file.

(c) *Resolution.* Unfair competitive advantage resulting from unequal access to nonpublic information may be resolved by information sharing, mitigation through use of a firewall, or exclusion. In some cases, a combination of methods may be appropriate.

(1) *Information sharing.* Information sharing consists of disseminating the information in question to all potential offerors, either in the solicitation, in a solicitation amendment, or through some other method, such as posting it online.

(i) This method is generally available when the relevant information is Government information. In situations where the information belongs to another party (for instance, a contractor for whom a potential offeror worked as a subcontractor), appropriate permission must be obtained before such information can be shared with other parties, and appropriate protections must be implemented with respect to the shared information.

(ii) For this method to be effective, information must be shared with potential offerors early enough in the acquisition process to allow those offerors to effectively utilize the information.

(2) *Mitigation through use of a firewall.* In cases where only some of an offeror's employees have or had access to the relevant information, it may be possible for the offeror to create an internal barrier (often called a firewall) to prevent those employees from sharing that information with others. The contracting officer may conclude that this is an acceptable resolution if the result is that none of the offeror's employees who are involved in the competition has access to the nonpublic information.

(i) The contracting officer may determine that the requirements and protections of clause 52.204–XX, Access to Nonpublic Information, constitute an adequate firewall, if nonpublic information was gained directly through performance on another Government contract that included the clause.

(ii) Creation of a firewall may be proposed by a potential offeror, or it may be proposed by the agency. The contracting officer retains discretion to approve or reject the proposed firewall. Firewalls can consist of a variety of elements, including organizational and physical separation; facility and workspace access restrictions; information system access restrictions; independent compensation systems; and individual and organizational nondisclosure agreements.

(iii) In cases involving mitigation through use of a firewall, the offeror's proposal must include a representation that, to the best of its knowledge and belief, there were no breaches of the firewall during preparation of the proposal or must explain any breach that occurred. (See paragraph (c) of provision 52.204–YZ.)

(3) *Disqualification.* The contracting officer must disqualify the offeror from consideration for the contract if the contracting officer determines that—

(i) A potential offeror has, or has had, unequal, Government-provided access to nonpublic information;

(ii) The information would provide the potential offeror with an unfair competitive advantage; and

(iii) Neither information sharing nor mitigation through use of a firewall will serve to protect the fairness of the competition.

(d) *Multiple-award contracts.* In addition to complying with the requirements outlined in paragraphs (a) through (c) when placing orders under multiple-award contract vehicles (including multiple-award indefinite-delivery/indefinite quantity contracts and multiple-award blanket purchase agreements), contracting officers must take additional steps when awarding such contracts and blanket purchase agreements. The contracting officer shall ensure that the ordering procedures clause requires the inclusion of terms similar to those found in the provision at 52.204–YZ, Unequal Access to Nonpublic Information, in any order competed under the multiple-award contract or blanket purchase agreement (see 16.505(b)).

4.402–5 Solicitation provision.

The contracting officer shall include in all solicitations that exceed the simplified acquisition threshold a provision substantially the same as 52.204–YZ, Unequal Access to Nonpublic Information.

4.403 Safeguarding Classified Information.

4.403–2 [Amended]

9c. In newly redesignated section 4.403–2, remove from paragraph (b) "(see 4.404)" and add "(see 4.403–3)" in its place.

PART 7—ACQUISITION PLANNING

10. Amend section 7.105 by redesignating paragraphs (b)(18) through (b)(22) as paragraphs (b)(19) through (b)(23), respectively; and adding a new paragraph (b)(18) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(18) *Organizational conflicts of interest.* Describe any significant potential organizational conflicts of interest (see subpart 3.12) that may exist at time of contract award or may arise during contract performance and explain the proposed method of addressing these conflicts. Briefly identify any solicitation provisions and contract clauses that would be used.

* * * * *

7.503 [Amended]

11. Amend section 7.503 by removing from paragraph (d)(11) "4.402(b)" and adding "4.403–1(b)" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

12. Revise section 9.000 to read as follows:

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; and defense production pools and research and development pools.

Subpart 9.5 [Removed and Reserved]

13. Remove and reserve subpart 9.5.

PART 11—DESCRIBING AGENCY NEEDS

11.000 [Amended]

14. Amend section 11.002 by removing from paragraph (c) "Subpart 9.5" and adding "subpart 3.12" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

15. Amend section 12.301 in paragraph (d) by revising paragraph (2); redesignating paragraphs (3) and (4) as (4) and (5), respectively; and adding new paragraphs (3) and (6) to read as follows:

(d) * * *

(2) Insert the provision and clauses relating to Organizational Conflicts of Interest as prescribed at 3.1207 when applicable.

(3) Insert the provision 52.204–XY, Release of Pre-Award Information, and clauses at 52.204–XX, Access to Nonpublic Information, and 52.204–YY, Release of Nonpublic Information, as prescribed at 4.401–4. Insert a provision substantially the same as 52.204–YZ, Unequal Access to Nonpublic Information, as prescribed in 4.402–5.

* * * * *

(6) Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301–4.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

16. Amend section 13.302–5 by adding paragraph (e) to read as follows:

13.302–5 Clauses.

* * * * *

(e) Insert the provision at 52.204–XY, Release of Pre-Award Information, and the clauses at 52.204–XX, Access to Nonpublic Information, and 52.204–YY, Release of Nonpublic Information, as prescribed at 4.401–4. Insert a provision substantially the same as 52.204–YZ, Unequal Access to Non-Public Information, as prescribed in 4.402–5. Insert the provision and clauses relating to Organizational Conflicts of Interest as prescribed at 3.1207 when applicable.

PART 14—SEALED BIDDING

17. Amend section 14.201–6 by adding paragraph (y) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(y) See the prescription at 4.401–4(b) for use of the provision at 52.204–XY, Release of Pre-Award Information.

18. Amend section 14.201–7 by adding paragraph (e) to read as follows:

14.201–7 Contract clauses.

* * * * *

(e) See the clause prescription at 4.401–4(c) for use of the clause at 52.204–YY, Release of Nonpublic Information.

PART 15—CONTRACTING BY NEGOTIATION

19. Amend section 15.209 by adding paragraph (i) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(i)(1) See the prescription at 4.401–4(b) for use of the provision at 52.204–XY, Release of Pre-Award Information.

(2) See the clause prescription at 4.401–4(c) for use of the clause at 52.204–YY, Release of Nonpublic Information.

20. Amend section 15.604 by revising paragraph (a)(2) to read as follows:

15.604 Agency points of contact.

(a) * * *

(2) Requirements concerning responsible prospective contractors (*see* subpart 9.1).

* * * * *

PART 16—TYPES OF CONTRACTS

21. Amend section 16.505 by revising paragraph (b)(1)(ii)(C) to read as follows:

16.505 Ordering.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(C) Tailor the procedures to each acquisition, including appropriate procedures for addressing unequal access to nonpublic information (*see* 4.402);

* * * * *

PART 18—EMERGENCY ACQUISITIONS

22. Amend section 18.000 by revising paragraph (b) to read as follows:

18.000 Scope of part.

* * * * *

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in Part 3, Business Ethics and Conflicts of Interest.

* * * * *

PART 37—SERVICE CONTRACTING

23. Amend section 37.110 by revising paragraph (d) to read as follows:

* * * * *

(d) See subpart 3.12 regarding the use of an appropriate provision and clause concerning organizational conflicts of interest, which may at times be significant in solicitations and contracts for services.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

24. Amend section 42.1204 by revising paragraph (d) to read as follows:

42.1204 Applicability of novation agreements.

* * * * *

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with subpart 3.12. If the responsible contracting officer determines that a conflict of interest cannot be addressed, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 3.1205.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Add sections 52.203–XX, 52.203–ZZ, 52.203–YY, and 52.203–YZ to read as follows:

52.203–XX, Notice of Potential Organizational Conflict of Interest.

As prescribed in 3.1207(a), insert a provision substantially the same as the following:

Notice of Potential Organizational Conflict of Interest (Date)

(a) *Definition. Organizational conflict of interest,* as used in this provision, is defined in 52.203–ZZ, Disclosure of Organizational Conflict of Interest after Contract Award.

(b) *Notice.* (1) The Contracting Officer has determined that the nature of the work to be performed in the contract resulting from this solicitation is such that it may give rise to organizational conflicts of interest (see subpart 3.12, Organizational Conflicts of Interest).

(2) The following contractors participated in the preparation of the statement of work or other requirements documents, including cost or budget estimates:

_____

[Contracting Officer to fill in, if any.]

(c) *Proposal requirements.* (1) *Assessment.* Applying the principles of subpart 3.12, the offeror shall assess whether there is an organizational conflict of interest associated with the offer it plans to submit, including any potential subcontracts.

(2) *Disclosure.* The offeror shall—

(i) Disclose all relevant information regarding any organizational conflicts of interest, including information about potential subcontracts; and

(ii) Describe any relevant limitations on future contracting, the term of which has not yet expired, to which the offeror or potential subcontractor agreed.

(3) *Representation.* The offeror represents, by submission of its offer, that to the best of its knowledge and belief it has disclosed all relevant information regarding any organizational conflicts of interest as required in paragraph (c)(2) of this provision.

(4) To the extent that either the offeror or the Government identifies any organizational conflicts of interest on the current contract, the offeror shall explain the actions it intends to use to address such conflicts, *e.g.,* by submitting a mitigation plan and/or accepting a limitation on future contracting.

(5) The Contracting Officer is the final authority in determining whether an organizational conflict of interest exists and whether the organizational conflict of interest has been adequately addressed.

(d) *Resultant contract.* (1) If the offeror submits an organizational conflict of interest mitigation plan, the resultant contract will include the Government-approved Mitigation Plan and a clause substantially the same as 52.203–YY, Mitigation of Organizational Conflicts of Interest.

(2) If the resolution of the organizational conflict of interest involves a limitation on future contracting, the resultant contract will include a clause substantially the same as 52.203–YZ, Limitation on Future Contracting.

(End of provision)

52.203–ZZ, Disclosure of Organizational Conflict of Interest After Contract Award.

As prescribed in 3.1207(b), insert the following clause:

Disclosure of Organizational Conflict of Interest After Contract Award (Date)

(a) *Definition. Organizational conflict of interest,* as used in this clause, means a situation in which—

(1) A Government contract requires a contractor to exercise judgment to assist the Government in a matter (such as in drafting specifications or assessing another contractor's proposal or performance) and the contractor or its affiliates have financial or other interests at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the contractor may be improperly influenced by its own interests rather than the best interests of the Government; or

(2) A contractor could have an unfair competitive advantage in an acquisition as a result of having performed work on a Government contract, under circumstances such as those described in paragraph (1) of this definition, that put the contractor in a position to influence the acquisition.

(b) If the Contractor identifies an organizational conflict of interest that was not previously addressed and for which a waiver has not been granted, or a change to any relevant facts relating to a previously identified organizational conflict of interest, the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. Organizational conflicts of interest that arise during performance of the contract, as well as newly discovered conflicts that existed before contract award, shall be disclosed. This disclosure shall include a description of—

(1) The organizational conflict of interest; and

(2) Actions to address the conflict that—

(i) The Contractor has taken or proposes to take; or

(ii) The Contractor recommends that the Government take.

(c) If, in compliance with this clause, the Contractor identifies and promptly reports an organizational conflict of interest that cannot be addressed in a manner acceptable to the Government, the Contracting Officer may terminate for the convenience of the Government—

(1) This contract, except as provided in paragraph (c)(2) of this clause;

(2) If this is a task- or delivery-order contract, the task or delivery order; or

(3) If this is a blanket purchase agreement, the blanket purchase agreement call.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts where the work includes or may include tasks that may create a potential for an organizational conflict of interest. The terms "Contractor" and "Contracting Officer" shall be appropriately modified to reflect the change in parties.

(End of clause)

52.203–YY, Mitigation of Organizational Conflicts of Interest.

As prescribed in 3.1207(c), insert a clause substantially the same as the following:

Mitigation of Organizational Conflicts of Interest (Date)

(a) *Definition. Organizational conflict of interest,* as used in this clause, is defined in the clause 52.203–ZZ, Disclosure of Organizational Conflict of Interest after Contract Award.

(b) *Mitigation plan.* The Government-approved Organizational Conflict of Interest Mitigation Plan (Mitigation Plan) and its obligations are hereby incorporated in the contract by reference.

(c) *Changes.* (1) Either the Contractor or the Government may propose changes to the Mitigation Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon written approval of the revised Mitigation Plan by the Contracting Officer.

(2) The Contractor shall update the mitigation plan within 30 days of any changes to the legal construct of its organization, any subcontractor changes, or any significant management or ownership changes.

(d) *Noncompliance.* (1) The Contractor shall report to the Contracting Officer any noncompliance with this clause or with the Mitigation Plan, whether by its own personnel or those of the Government or other contractors.

(2) The report shall describe the noncompliance and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the noncompliance.

(3) After conducting such further inquiries and discussions as may be necessary, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct corrective action, subject to the terms of this contract.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks related to the organizational conflict of interest. The terms "Contractor" and "Contracting Officer" shall be appropriately modified to reflect the change in parties.

(End of clause)

52.203–YZ, Limitation on Future Contracting.

As prescribed in 3.1207(d), insert a clause substantially the same as the following:

Limitation on Future Contracting (Date)

(a) *Limitation.* The Contractor and any of its affiliates, shall be ineligible to perform _____ [Contracting Officer to describe the work that the Contractor will be ineligible to perform] as a contractor or as a subcontractor for a period of _____. [Contracting Officer to determine appropriate length of prohibition.]

(b) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (b), in subcontracts where the work includes tasks which result in an organizational conflict of interest. The terms "Contractor" and "Contracting Officer" shall be appropriately modified to reflect the change in parties.

(End of clause)

26. Amend section 52.204–2 by removing from the introductory paragraph "4.404(a)" and adding "4.403–3(a)" in its place; and revising the introductory texts of Alternate I and Alternate II to read as follows:

52.204–2 Security requirements.

* * * * *

Alternate I (Apr 1984). As prescribed in 4.403–3(b), add the following paragraphs (e), (f), and (g) to the basic clause:

* * * * *

Alternate II (Apr 1984). As prescribed in 4.403–3(c), add the following paragraph (e) to the basic clause:

* * * * *

27. Add sections 52.204–XX, 52.204–XY, 52.204–YY, and 52.204–YZ to read as follows:

52.204–XX, Access to Nonpublic Information.

As prescribed in 4.401–4(a), insert the following clause:

Access to Nonpublic Information (Date)

(a) *Definition. Nonpublic information,* as used in this clause, means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) *Restrictions on use and disclosure of nonpublic information.* (1) The restrictions provided in this clause are intended to protect both the Government and third-party owners of nonpublic information from unauthorized use or disclosure of such information.

(i) The Contractor shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any nonpublic information to which it is given access during performance of this contract.

(ii) Third-party owners of nonpublic information to which the Contractor may have access during performance of this contract are third-party beneficiaries with respect to the terms of this clause who, in addition to any other rights they may have, may have the right of direct action against the Contractor to seek damages from any violation of the terms of this clause or to otherwise enforce the terms of this clause.

(2) With regard to any nonpublic information to which the Contractor is given access in performance of this contract, whether the information comes from the Government or from third parties, the Contractor shall—

(i) Utilize the nonpublic information only for the purposes of performing the services specified in this contract, and not for any other purposes;

(ii) Safeguard the nonpublic information from unauthorized use and disclosure;

(iii) Limit access to the nonpublic information to only those persons who need it to perform services under this contract;

(iv) Inform persons who may have access to nonpublic information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure;

(v) Obtain a signed nondisclosure agreement, which at a minimum includes language substantially the same as that found in paragraph (b)(1) and (b)(2)(i) through (iv) of this clause, from each person who may have access to the nonpublic information;

(vi) Provide a copy of any such nondisclosure agreement to the contracting officer upon request; and

(vii) Report to the contracting officer any violations of requirements (i) through (vi) of this paragraph as soon as the violation is identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective actions taken as necessary.

(3) If the Contractor receives information that is marked in a way that indicates the Contractor should not receive this information, the Contractor shall—

(i) Notify the Contracting Officer;

(ii) Use the information only in accordance with the instructions of the Contracting Officer; and

(iii) Comply with any other notification provisions contained in this contract.

(c) *Applicability.* (1) The obligations and prohibitions of paragraph (b) do not apply if the Contractor can demonstrate to the Contracting Officer that the information—

(i) Was in the public domain at the time the information was accessed by the Contractor;

(ii) Was published, after having been accessed by the Contractor, or otherwise becomes part of the public domain through no fault of the Contractor;

(iii) Was lawfully in the Contractor's possession at the time the Contractor accessed it and was not acquired directly or indirectly—

(A) From the Government; or

(B) Under another Government contract;

(iv) Was received by the Contractor from a party, other than the information owner, who has the authority to release the information and did not require the Contractor to hold it in confidence.

(v) Is or becomes available, on an unrestricted basis in a lawful manner, to a third party from the information owner or someone acting under the control of the information owner;

(vi) Is developed by or for the Contractor independently of the information received from the Government or the information owner and such independent development can be shown;

(vii) Becomes available to the Contractor by wholly lawful inspection or analysis of products offered for sale by the information owner or someone acting under the information owner's control, or an authorized third-party reseller or distributor; or

(viii) Is provided to a third party by the Contractor with the prior written approval of the information owner.

(2) The Contractor may release nonpublic information to which the Contractor is given access in performance of this contract to a third party pursuant to the lawful order or rules of a United States Court or Federal administrative tribunal or body of competent jurisdiction, provided that the Contractor gives to the information owner prior written notice of such obligation and the opportunity to oppose such disclosure. The Contractor shall provide a copy of the notice to the Contracting Officer at the same time as notice is given to the information owner.

(d) *Other contractual restrictions on information.* This clause is subordinate to all other contract clauses or requirements that specifically address the access, use, handling, or disclosure of information. If any restrictions or authorizations in this clause are inconsistent with a requirement of any other clause of this contract, the requirement of the other clause shall take precedence over the requirement of this clause.

(e) *Remedies available to a third-party information owner.* The Contractor's failure to comply with the requirements of this clause may provide grounds for independent legal action or other remedies available to a third-party information owner based on the protections of paragraph (b)(1) of this clause (third-party beneficiary).

(f) *Subcontracts.* The Contractor shall include this clause, including this paragraph (f), in subcontracts under which a subcontractor may have access to nonpublic information, The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(End of clause)

Alternate I (Date). As prescribed in 4.401–4(a)(2)(i), add the following paragraph (c)(3) to the basic clause:

(c)(3) The Contractor shall, if requested by the Contracting Officer—

(i) Negotiate and sign an agreement identical, in all material respects, to paragraphs (b)(2) and (c) of this clause, with each entity identified by the Contracting Officer that has provided the Government nonpublic information to which the Contractor must now have access to perform its obligations under this contract; and

(ii) Supply a copy of the executed agreement(s) to the Contracting Officer [within 30 days].

Alternate II (Date). As prescribed in 4.401–4(a)(2)(ii), add the following paragraph (c)(3) to the basic clause (if Alternate I is also used, redesignate the following paragraph as (c)(4)):

(c)(3) The Contractor shall, if requested by the Contracting Officer—

(i) Execute a Government-approved agreement with each entity identified by the Contracting Officer to whose facilities or nonpublic information the Contractor is given access; and

(ii) Supply a copy of the executed agreement(s) to the Contracting Officer.

52.204–XY, Release of Pre-Award Information.

As prescribed in 4.401–4(b), insert the following provision:

Release of Pre-Award Information (Date)

(a) *Definition. Nonpublic information,* as used in this provision, means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) The Government may need to release some of the nonpublic information submitted by the offeror in connection with this solicitation. By submission of its offer, the offeror agrees that the Government may, in appropriate circumstances, release to its contractors, their subcontractors, and their individual employees, such nonpublic information, subject to the protections referenced at paragraph (d) of this provision.

(c) This provision does not affect the agency's responsibilities under the Freedom of Information Act or the Procurement Integrity Act.

(d) To receive access to nonpublic information needed to assist in accomplishing agency functions, the contractor that will receive access to the information must be operating under a contract that contains the clause at 52.204–XX, Access to Nonpublic Information, which obligates the contractor to do the following:

(1) Utilize the nonpublic information only for the purposes of performing the services specified in this contract, and not for any other purposes;

(2) Safeguard nonpublic information from unauthorized use and disclosure;

(3) Limit access to the nonpublic information to only those persons who need it to perform services under this contract;

(4) Inform persons who may have access to nonpublic information about their obligations to utilize it only to perform the services specified in this contract and to safeguard that information from unauthorized use and disclosure;

(5) Obtain a signed nondisclosure agreement from each person who may have access to the nonpublic information; and

(6) Report to the Contracting Officer any violations of requirements (1) through (5) of this paragraph as soon as the violation is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation, with follow-up reports of corrective actions taken as necessary.

(e) Paragraph (e) of the clause at 52.204–XX, Access to Nonpublic Information, included in the contract of the contractor with access to the nonpublic information provides that the third-party information owner may have the right to pursue third-party beneficiary rights against the contractor with access to the information for breaches of the requirements of that clause.

(End of provision)

52.204–YY, Release of Nonpublic Information.

As prescribed in 4.401–4(c) insert the following clause:

Release of Nonpublic Information (Date)

(a) *Definition. Nonpublic information,* as used in this clause, means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) The Contractor agrees that the Government may, in appropriate circumstances, release to its contractors, their subcontractors, and their individual employees, nonpublic information provided by the Contractor in the performance of this contract, subject to the protections referenced at paragraph (d) of this clause.

(c) This clause does not affect the agency's responsibilities under the Freedom of Information Act or the Procurement Integrity Act.

(d) To receive access to nonpublic information needed to assist in accomplishing agency functions, the

contractor that will receive access to the nonpublic information must be operating under a contract that contains the clause at 52.204–XX, Access to Nonpublic Information, which obligates the contractor to do the following:

(1) Utilize the nonpublic information only for the purposes of performing the services specified in this contract, and not for any other purposes;

(2) Safeguard nonpublic information from unauthorized use and disclosure;

(3) Limit access to the nonpublic information to only those persons who need it to perform services under this contract;

(4) Inform persons who may access nonpublic information about their obligations to utilize it only to perform the services specified in this contract and to safeguard that information from unauthorized use and disclosure;

(5) Obtain a signed nondisclosure agreement from each person who may have access to the nonpublic information; and

(6) Report to the Contracting Officer any violations of requirements (1) through (5) of this paragraph as soon as the violation is identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective actions taken as necessary.

(e) Paragraph (e) of the clause at 52.204–XX, Access to Nonpublic Information, included in the contract of the contractor with access to the nonpublic information provides that the third-party information owner may have the right to pursue third-party beneficiary rights against the contractor with access to the nonpublic information for breaches of the requirements of that clause.

(f) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of nonpublic information to this agency under the subcontract.

(End of clause)

52.204–YZ, Unequal Access to Nonpublic Information.

As prescribed in 4.402–5, insert a provision substantially the same as the following:

Unequal Access to Nonpublic Information (Date)

(a) *Definition. Nonpublic information,* as used in this provision, means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) *Pre-proposal requirements.* Applying the principles of 4.402, the offeror shall inform the Contracting Officer, prior to the submission of its offer, if it or any of its affiliates possesses any nonpublic information relevant to the current solicitation and provided by the Government, either directly or indirectly; the offeror should also advise the Contracting Officer of any actions that the offeror proposes to take to resolve the situation.

(c) *Proposal requirements.* If a firewall has been used to mitigate the impact of access to nonpublic information, the offeror represents, to the best of its knowledge and belief, that the firewall was implemented as agreed, and was not breached during the preparation of this offer; or, by checking this box [ ], that the firewall was not implemented or was breached, and additional explanatory information is attached.

(End of provision)

PART 53—FORMS

53.204–1 [Amended]

28. Amend section 53.204–1 by removing from paragraph (a) "(see 4.403(c)(1).)" and adding "(see 4.403–2(c)(1).)" in its place.

[FR Doc. 2011–9415 Filed 4–25–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0052]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Granting petition for rulemaking.

SUMMARY: This notice grants the petition for rulemaking submitted by the Motorcycle Industry Council (MIC) requesting that the agency amend the license plate holder requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 to allow motorcycles to mount license plates at an upward angle of up to 30 degrees.[1] Based on the information received in MIC's petition and the petitions for reconsideration of the December 4, 2007 final rule reorganizing FMVSS No. 108,[2] the agency believes that MIC's petition merits further consideration through the rulemaking process.

The National Highway Traffic Safety Administration plans to initiate the rulemaking process on this issue with a notice of proposed rulemaking later this year. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: For technical issues: Markus Price, Office of Crash Avoidance Standards (NVS–121), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–0098) (*Fax:* (202) 366–7002).

For legal issues: Jesse Chang, Office of the Chief Counsel (NCC–112), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–2992) (*Fax:* (202) 366–3820).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2005, MIC submitted to the agency a petition for rulemaking requesting that the agency include an additional subpart to FMVSS No. 108. Specifically, MIC requested the addition of a subpart to be designated as S5.1.1.30, which would read as follows:

"S5.1.1.30 On a motorcycle where the upper edge of the license plate is not more than 1.2 m (47.25 in.) from the ground, the plate bearing the license numbers shall face between 30 degrees upward and 15 degrees downward from the vertical plane."

MIC submitted this petition for rulemaking with the understanding that the current FMVSS No. 108 requires license plates to be mounted at ± 15 degrees of perpendicular to the plane on which the vehicle stands. In their petition, MIC took note that "although the lighting standard doesn't directly speak to license plate mounting, the requirement at issue is contained in SAE J587 October 1981, which is incorporated into FMVSS No. 108 in Table III for license plate lamps." Petitioner notes that the requirements of the October 1981 Standard J587 are different from the European Community (ECE) regulations. By including the proposed subpart, petitioner hopes to harmonize the current motorcycle license plate requirements with the requirements in the ECE regulations.

Petitioner stated that this harmonization would not adversely affect safety or law enforcement efforts but would serve to reduce unnecessary design and manufacturing complexities for its member companies. Further, petitioner believes that by allowing a 30 degree upward angle, the manufacturers will be afforded greater flexibility in design without any detriment to real world reflective illumination of the license plates. As additional support for

[1] Motorcycle Industry Council Petition for Rulemaking, March 14, 2005 (Docket No. NHTSA–2005–20286–0009)

[2] 72 FR 68234 (December 4, 2007).

their request, MIC mentions that SAE Standard J587 was updated in 1997 to also allow for the 30 degree upward angle permitted by the ECE regulations.

In addition to the MIC petition for rulemaking of March 14, 2005, the agency has received petitions for reconsideration of the December 4, 2007 final rule that reorganized FMVSS No. 108. These petitions for reconsideration were also concerned with license plate holders and the mounting requirements. In that final rule, the agency included the license plate mounting requirements of SAE Standard J587 (October 1981) directly into the regulatory text. Petitioners objected on the grounds that the license plate mounting requirements of the 1981 SAE standard were never incorporated into FMVSS No. 108 and thus should not be included in an administrative rewrite of FMVSS No. 108 where the agency has stated no intent to substantively change the standard. A more detailed discussion of these petitions is available in today's **Federal Register** where the agency has issued a notice denying, in part, the petitions for reconsideration of the December 4, 2007 final rule.

Conclusion

Having received this petition for rulemaking and the aforementioned petitions for reconsideration of the December 4, 2007 final rule reorganizing FMVSS No. 108, the agency has decided that MIC's petition merits further consideration through the rulemaking process and hereby grants its petition for rulemaking. The agency plans to initiate the rulemaking process later this year through the publication of a notice of proposed rulemaking. This agency also announces in a separate notice published in today's **Federal Register** that it is denying the aforementioned petitions for reconsideration as the agency has decided to resolve this issue through rulemaking. However, due to the special circumstances and confusion surrounding the license plate mounting requirements among the relevant stakeholders, the agency announces through this notice that it will not enforce the 15 degree license plate holder mounting requirement during the pendency of rulemaking on the issue of that requirement.

The granting of the petition from MIC, however, does not indicate that a final rule will be issued as requested by MIC. The determination of whether to issue a rule and the content of the rule is made after the study of the requested action and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

Issued on: April 21, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–10025 Filed 4–25–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–28322]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denying, in part, petitions for reconsideration.

SUMMARY: This document denies, in part, the petitions for reconsideration of the December 4, 2007, final rule reorganizing Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108). The petitions are denied only as they relate to subpart S6.6.3 (License Plate Holder) of the final rule.

FOR FURTHER INFORMATION CONTACT: For technical issues: Markus Price, Office of Crash Avoidance Standards (NVS–121), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–0098) (*Fax:* (202) 366–7002).

For legal issues: Jesse Chang, Office of the Chief Counsel (NCC–112), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–2992) (*Fax:* (202) 366–3820).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2005, the agency published in the **Federal Register** a notice of proposed rulemaking concerning 49 CFR 571.108 (Federal Motor Vehicle Safety Standard No. 108).[1] The agency stated that the goal of the proposal was to "amend the standard by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements." After the publication of a final rule on December 4, 2007,[2] adopting the proposal with revisions, the agency received petitions for reconsideration from Harley-Davidson Motor Company (January 18, 2008) and Ford Motor Company (January 18, 2008) asking the agency to reconsider the license plate holder requirements in subpart S6.6.3. A submission by the Motorcycle Industry Council (MIC) on March 19, 2009 also requested a similar change to S6.6.3. However, the MIC submission was not timely for the purposes of reconsidering this final rule and has been considered as a petition for rulemaking per 49 CFR 553.35.

In subpart S6.6.3 of the December 4, 2007 final rule, the agency included provisions expressly requiring that manufacturers of motor vehicles design license plate holders so that the plane surface of a license plate in the holder would be within ± 15° of perpendicular to the plane surface on which the vehicle stands.

Paragraph S5.1.1 of the pre-reorganized version of FMVSS No. 108 required that passenger vehicles and motorcycles be equipped with the "lamps, reflective devices, and associated equipment" listed in Table III of Standard 108. Table III listed lamps such turn signal lamps, reflectors such as reflex reflectors, and associated equipment such as turn signal operating units. Further, S5.1.1 required that the equipment listed in Table III conform to the corresponding SAE Standards listed in that table. One of the listed items of equipment was "license plate lamps." Table III required "license plate lamps" to be designed to conform to SAE Standard J587 (October 1981). Among other requirements, SAE Standard J587 states in paragraph 6.1 that "the angle between the plane of the license plate and the plane on which the vehicle stands will be 90 ± 15 deg."

Petitioners request that the agency reconsider subpart S6.6.3 on a number of grounds. First, petitioners contend that license plate holders are not lamps, reflective devices, or associated equipment listed in Table III and thus were never regulated under S5.1.1 of the pre-reorganized version of FMVSS No. 108. Therefore, petitioners believe that as a result of including S6.6.3 in the reorganization of FMVSS No. 108, the agency was imposing a new requirement and contravening its statement in the December 4, 2007 final rule that the "final rule does not impose any new substantive requirements on manufacturers." In addition, petitioners assert that the license plate mounting provisions of SAE Standard J587 are intended to serve the purpose of ensuring an objective means of measuring photometric performance, but not intended to be a requirement. Finally, petitioners request that should the agency consider license plate holders to be regulated, the agency

[1] 70 FR 77454 (December 30, 2005).

[2] 72 FR 68234 (December 4, 2007).

should harmonize the license plate holder requirements with the most recent revision of SAE Standard J587 and the requirements in European Union.[3]

In 1995, the agency stated that FMVSS No. 108 "incorporated SAE J587 in its entirety, and there is no exclusion of paragraph 6.1." The agency made this statement in an interpretation letter addressed to Volkswagen of America, Inc.[4]

Notwithstanding that interpretation, NHTSA takes note that there has been significant confusion among the relevant stakeholders as to whether or not the mounting provisions of SAE Standard J587 were incorporated into FMVSS No. 108 via Table III as referenced through S5.1.1. On the one hand, the Motorcycle Industry Council (MIC) petitioned this agency for rulemaking in March of 2005 (before the December 30, 2005 NPRM in this rulemaking) requesting that the agency update the incorporated SAE Standard J587 to allow for a 30 degree upward angle mounting position for license plates. The March 2005 petition seems to indicate that MIC believed that the license plate mounting provisions of SAE Standard J587 were incorporated into FMVSS No. 108 via S5.1.1 and Table III. On the other hand, the Alliance of Automobile Manufacturers commented on March 30, 2006 to the 2005 NPRM and disputed the view that those provisions were ever incorporated into FMVSS No. 108.

Conclusion

Given the confusion over whether or not SAE Standard J587's provisions on license plate holders were incorporated into the prior version of FMVSS No. 108 and given the petition to initiate rulemaking premised on their incorporation and requesting their relaxation, the agency has decided to resolve this matter through rulemaking. Thus, through this document, the agency denies the aforementioned petitions for reconsideration as they relate to S6.6.3 (License Plate Holder) of the December 4, 2007 final rule. However, the agency is granting the petition from MIC requesting the agency to initiate rulemaking to examine the issue of license plate holders and their mounting requirements[5] in a separate document published in today's **Federal Register**. Further, due to the confusion and special circumstances surrounding this rule, the agency announced in the aforementioned document in today's **Federal Register** that it will not enforce the 15 degree license plate holder mounting requirement during the pendency of rulemaking on the issue of that requirement.

The agency also notes that it is still considering the comments and requests relating to other issues in the petitions for reconsideration of the December 4, 2007 final rule and will respond to them in a separate document.

Issued on: April 21, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–10030 Filed 4–25–11; 8:45 am]

BILLING CODE 4910–59–P

[3] The 1997 revision of SAE Standard J587 permits license plates mounted at less than 1.2 meters above the ground to be angled upwards at 30 degrees and maintained the requirement for plates to be angled downward at no more than 15 degrees.

[4] Available at *http://isearch.nhtsa.gov/files/0788.html.*

[5] Motorcycle Industry Council Petition for Rulemaking, March 14, 2005 (Docket No. NHTSA–2005–20286–0009)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0019]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Arapahoe Snowfly as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the Arapahoe snowfly (*Capnia arapahoe*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Arapahoe snowfly is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted under the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 27, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (*see* **ADDRESSES** section below) is 11:59 p.m. Eastern Time on this date. After June 27, 2011, you must submit information to the Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above-requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS–R6–ES–2011–0019. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [Docket number FWS–R6–ES–2011–0019]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Susan Linner, Project Leader, by U.S. mail at Colorado Field Office, P.O. Box 25486, Denver, CO 80225; by telephone at (303) 236–4773, or by facsimile at (303) 236–4005. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Arapahoe snowfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other

interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*) are:

(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.

If, after the status review, we determine that listing the Arapahoe snowfly is warranted, we will propose critical habitat (*see* definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Arapahoe snowfly, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On April 6, 2010, we received a petition of the same date from The Xerces Society for Invertebrate Conservation, Dr. Boris Kondratieff, Save the Poudre: Poudre Waterkeeper, Cache la Poudre River Foundation, WildEarth Guardians, and Center for Native Ecosystems, requesting that the Arapahoe snowfly be listed as endangered and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In an April 13, 2010, letter to the petitioners, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that due to previously received petitions, court orders, other listing actions with statutory deadlines, and judicially approved settlement agreements that would take the remainder of Fiscal Year 2010 to complete, we anticipated responding to the petition in Fiscal Year 2011. On December 1, 2010, the petitioners filed a Notice of Intent to sue regarding our failure to complete a 90-day finding concerning their April 6, 2010, petition to list the Arapahoe snowfly. This finding addresses the petition.

Previous Federal Actions

On July 30, 2007, we received a formal petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians), requesting that the Service consider all full species in our Mountain-Prairie Region ranked as G1 or G1G2 by the organization NatureServe (except those that are currently listed, proposed for listing, or candidates for listing), and list each species as either endangered or threatened. The Arapahoe snowfly was one of the 206 species included in the petition. On March 19, 2008, WildEarth Guardians filed a complaint indicating that the Service failed to make a preliminary 90-day finding on their two multiple-species petitions—one for mountain-prairie species, and one for southwest species. We subsequently published two 90-day findings, on January 6, 2009 (74 FR 419), and February 5, 2009 (74 FR 6122). The February 5, 2009 (74 FR 6122), 90-day finding concluded that the petition did not present substantial scientific or commercial information indicating that listing may be warranted for 165 of the 206 species, including the Arapahoe

snowfly. The finding noted that the petition described two actions potentially impacting Arapahoe snowfly—construction of a small lake in the headwaters of one tributary providing habitat for the species, and recreational use along the length of the other tributary providing habitat for the species. However, the 2007 petition did not link these actions with impacts to the species. The most recent petition, dated April 6, 2010, provided new and more detailed information regarding the Arapahoe snowfly. This finding responds to that additional information.

Species Information

Taxonomy

The Arapahoe snowfly is a species in the class Hexapoda (insects), in the order Plecoptera (stonefly), the family Capniidae (small winter stoneflies), and the genus *Capnia* (NatureServe 2009, p. 1). The species was first discovered in 1986 and was identified as a new species in 1988 (Nelson and Kondratieff 1988, p. 77). The Arapahoe snowfly is most closely related to the Utah snowfly (*Capnia utahensis*), found in Utah, Nevada, and California, and the Sequoia snowfly (*C. sequoia*), found in California (Nelson and Kondratieff 1988, p. 79). Its current taxonomic status is accepted by the scientific community (Integrated Taxonomic Information System 2010, p. 1). Therefore, we recognize the Arapahoe snowfly as a valid species and a listable entity.

Physical Description

Arapahoe snowfly adults are dark colored (Mazzacano undated, p. 1) and have a body length of approximately 0.2 inches (in) (5 millimeters (mm)) and a wing length of also approximately 0.2 in (5 mm) (Nelson and Kondratieff 1988, p. 77). Both sexes have unusually large wings for stoneflies (Nelson and Baumann 1989, p. 312). The species' size at the immature stage has not been described.

Life History

Few studies have been conducted on the Arapahoe snowfly. Therefore, most of the information below comes from knowledge about stoneflies (order Plecoptera) in general, and other members of the winter stonefly family (family Capniidae). We expect that the life history of the Arapahoe snowfly would be consistent with that found for other stoneflies and snowflies. Stoneflies have a complex lifecycle that requires terrestrial habitat during adult phases and aquatic habitat during the immature (nymph) phases (Lillehammer *et al.* 1989, p. 183; Williams and Feltmate 1992, p. 33). In late winter, adult winter stoneflies commonly emerge from the space that forms under stream ice as water levels fall through the winter (Hynes 1976, p. 136). In early spring, both male and female adult stoneflies fly upstream along the stream corridor (Macneale *et al.* 2005, p. 1117). The Arapahoe snowfly's dispersal capabilities are unknown. However, known dispersal distances of other stoneflies range from 197 feet (ft) (60 meters (m)) to several miles (mi) (kilometers (km)), with long-distance dispersal possibly due to drifting in the wind or attraction to lights (Petersen *et al.* 1999, p. 411). In their search for mates, male winter stoneflies drum (beat their abdomen on the ground or on dead vegetation) with a frequency that is species-specific (Hynes 1976, p. 139). Mated females detach a ripened egg mass onto the water (Hynes 1976, p. 140). The eggs hatch in early spring. As water temperatures rise, the nymphs move into the stream's hyporheic zone (a loose rocky substrate under the stream saturated with water), undergo a period of inactivity (diapause) during the warm months, complete development during the late fall and early winter, and emerge as adults in late winter and early spring (Mazzacano undated, p. 1). This development is completed in a 1-year life cycle.

Additional details regarding the life history of many species in the genus *Capnia* are poorly known due to the inherent difficulties of sampling under ice in winter and distinguishing between species (Mazzacano undated, p. 2). Consequently, specific feeding behavior has not been observed, but nymphs of most species in this family feed by shredding detritus (Mazzacano undated, p. 2).

Habitat

Stoneflies, including the Arapahoe snowfly, are typically found in cold, well-oxygenated streams and rivers with a mean temperature less than 61 degrees Fahrenheit (°F) (16 degrees Celsius (°C)) (Baumann 1979, p. 242; Hart *et al.* 1991, p. 124; Williams and Feltmate 1992, p. 33). Stoneflies are sensitive to most types of pollution, and their numbers will decrease with a decrease in water quality (Baumann 1979, p. 241; Hart *et al.* 1991, p. 136; Williams and Feltmate 1992, p. 35; Rosenberg and Resh 1993, p. 244; Barbour *et al.* 1999, pp. 7–15).

The Arapahoe snowfly has been collected from two small tributaries to the Cache la Poudre River (Young Gulch and Elkhorn Creek) in the Front Range of the Rocky Mountains of Colorado (Nelson and Kondratieff 1988, p. 79). The species was collected near the confluence of both streams with the river (Colorado State University (CSU) 2005, p. 1). Aerial distance between these two tributaries is approximately 5 mi (8 km). Upper reaches of the streams are typified by steep slopes with ponderosa pine (*Pinus ponderosa*) (CSU 2005, p. 1). Lower reaches, near the confluence with the river, have a more open topography, with narrowleaf cottonwood (*Populus angustifolia*), coyote willow (*Salix exigua*), Drummond's willow (*S. drummondiana*), Rocky Mountain maple (*Acer glabrum*), chokecherry (*Padus virginiana*), and alder (*Alnus incana*) occurring along the stream margins (CSU 2005, p. 1). The stream substrate consists of pebble, cobble, and bedrock (CSU 2005, p. 1). In summer and fall, portions of both streams have only intermittent water flow (CSU 2005, p. 1).

Both streams where the Arapahoe snowfly has been located are within the Canyon Lakes Ranger District in Roosevelt National Forest on U.S. Forest Service (USFS) lands, but some adjacent land is privately owned, particularly in the Elkhorn Creek watershed (Matheson *et al.* 2010, p. 9; Mazzacano undated, p. 3).

Distribution, Abundance, and Trends

The distribution and abundance of the Arapahoe snowfly are not known prior to the species' discovery in 1986. Elkhorn Creek and Young Gulch are the only known locations where the Arapahoe snowfly has been detected (CSU 2005, p. 1). From 2007 to 2009, B. Kondratieff and B. Heinold searched six additional sites that have suitable habitat, including the Cache la Poudre River and its nearby tributaries close to Young Gulch and Elkhorn Creek, but did not locate the species (Matheson *et al.* 2010, p. 7). Numerous visits to Young Gulch since the species was found there in 1986 have failed to yield additional specimens (Nelson and Kondratieff 1988, p. 79; CSU 2005, p. 1; Mazzacano undated, p. 2). During routine survey work on Elkhorn Creek from 2007 to 2009, only 5 of the 500 *Capnia* stoneflies collected were identified as the Arapahoe snowfly, indicating rarity at its only known occupied habitat (Matheson *et al.* 2010, p. 7). Based upon the information available, the species currently has an extremely narrow distribution near the confluence of one small stream, is rare within its only known occupied habitat, and has likely been extirpated from one of the two streams where it was known to occur.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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 what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine the significance of that threat. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered, as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the level that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the Arapahoe snowfly, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

Information Provided in the Petition

The petition asserts that recreation, grazing, certain forest management practices, development, and barriers to dispersal threaten the Arapahoe snowfly. These assertions are described in more detail below.

Recreation—The petition asserts that recreation is a threat to the Arapahoe snowfly, and provides citations indicating that both stream drainages, but especially Young Gulch, experience recreational activities such as hiking, bicycling, camping, cross-country skiing, and horseback riding (Singletracks 2006, p. 1; USFS 2009a, p. 1; Two Knobby Tires 2009, p. 1; Trailcentral 2010, p. 1; Localhikes undated, p. 1). The petition asserts that these activities can adversely affect Arapahoe snowfly habitat via: (1) Runoff of pollutants from roads and trails (2) the introduction of bacteria and excess nutrients from dog, horse, and human waste; (3) trampling of streamside riparian habitat; (4) increased sedimentation from erosion caused by foot and bike traffic; and (5) the construction and maintenance of stream crossings and culverts that can interrupt streamflow and deposit sediments. The petition provided two references that speak generally to the impacts of recreation on stream habitats (Goeft and Alder 2001, p. 193; International Mountain Biking Association 2007, pp. 1, 8); however, these sources do not directly reference the Arapahoe snowfly or its habitat.

Grazing—The petition asserts that grazing can degrade water quality and negatively impact aquatic invertebrates such as the Arapahoe snowfly via: (1) Livestock trampling and consuming riparian vegetation, (2) livestock defecating and urinating in or adjacent to the stream channel, and (3) livestock increasing rates of erosion and sedimentation in the stream channel (Matheson *et al.* 2010, p. 14). The petition provided several citations to support the assertions regarding the general impacts of livestock on riparian habitat and associated invertebrate communities (Kennedy 1977, p. 52; Roath and Krueger 1982, p. 100; Clary and Webster 1989, p. 1; Schulz and Leininger 1990, p. 295; Chaney *et al.* 1993, p. 6; Fleischner 1994, pp. 629, 635; Leonard *et al.* 1997, p. 3; Belsky *et al.* 1999, pp. 419, 420–424; Strand and Merritt 1999, pp. 17–18; Agouridis *et al.* 2005, p. 592; Braccia and Voshell 2007, pp. 186, 196–198; McIver and McInnis 2007, pp. 293, 294, 298, 301). However, these sources do not directly reference the Arapahoe snowfly or its habitat.

Forest Management Practices—The petition asserts that control of the mountain pine beetle (*Dendroctonus ponderosae*) and the Red Feather Fuels Reduction Project—both conducted by the USFS—threaten the Arapahoe snowfly (Matheson *et al.* 2010, p. 16). The petition notes that spraying with carbaryl to control the ongoing mountain pine beetle outbreak is occurring at sites near Elkhorn Creek (USFS 2009c, pp. 1–2). It also notes that carbaryl is highly toxic to invertebrates, including stoneflies (Beyers *et al.* 1995, p. 32; U.S. Environmental Protection Agency (EPA) 2004, pp. 1, 46).

The Red Feather Fuels Reduction Project includes the removal of hazardous timber in order to restore healthy forests. The petition notes that road construction and controlled burning are actions associated with the removal of timber, and asserts that these actions impact the Arapahoe snowfly. We address potential impacts from roads under the "Development" section below. The source associated with controlled burns does not directly reference the Arapahoe snowfly or its habitat (Neary *et al.* 2008, pp. 142–143). Furthermore, the petition notes that an uncontrolled wildfire, which may be more likely to occur without prescribed burning, would likely be catastrophic (Matheson *et al.* p. 17).

Development—The petition asserts that the proximity of Elkhorn Creek to the Red Feather Lakes community poses risks to stream water quality and consequently to the Arapahoe snowfly, because of recreational use, road impacts, dewatering, and waste seepage from septic systems.

The petition notes general impacts to water systems caused by erosion from roads (Cederholm *et al.* 1980, p. 1; Anderson and Potts 1987, p. 681; Furniss *et al.* 1991, p. 302; Forman and Alexander 1998, p. 219; Trombulak and Frissell 2000, p. 18; Fischel 2001, p. ii; Gucinski *et al.* 2001, pp. 24–25; Angermeir *et al.* 2004, p. 19; Center for Environmental Excellence 2009, pp. 4–7). The petition notes that an increase in recreational activities is anticipated due to recently improved road and trail access in the Elkhorn Creek watershed (USFS 2009b, p. 4). It also notes that roads and trails are already causing damage to Elkhorn Creek (USFS 2009a, p. 48). The petition notes that road salts, primarily magnesium chloride, are used as deicers on roads in the area and may increase the salinity of Elkhorn Creek (Lewis 1999, p. i). The petition asserts that an increase in salinity could pose risks to the Arapahoe snowfly (Lewis

1999, p. 30). However, this reference does not directly address the Arapahoe snowfly or its habitat.

The petition also asserts that existing water withdrawals from Elkhorn Creek may result in higher water temperatures and decreased dissolved oxygen concentrations, thereby impacting the species, which requires cool, well-oxygenated waters. The petition notes the numerous water rights associated with the community of Red Feather Lakes (Red Feather Historical Society 2004, p. 405). The petition asserts that dewatering can impact biological activity in stream substrates, rendering them unsuitable for many aquatic invertebrates (Hancock 2002, p. 764). However, these references do not directly address the Arapahoe snowfly or its habitat.

The petition notes that most development in the Red Feather Lakes area relies on septic systems (George Weber Environmental, Inc. 2007, p. 11). The petition asserts that septic systems pose a potential risk of introducing excess nutrients and bacteria into Elkhorn Creek (Hancock 2002, pp. 764–765; Peterson *et al.* 2003, pp. 6, 16). However, these sources do not directly reference the Arapahoe snowfly or its habitat.

Barriers to Dispersal—The petition notes that habitat conditions in the Cache la Poudre River are impaired (City of Fort Collins 2008a, p. 7). The petition asserts that this may limit the capacity of the Arapahoe snowfly to use the river as a route for dispersal to colonize other nearby tributaries. This outcome would result in the species being entirely confined to Elkhorn Creek. However, this reference does not directly address the Arapahoe snowfly or its habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

Recreation—As the petition noted, the Young Gulch trail is popular with hikers and mountain bikers (Localhikes.com undated, p. 1). Young Gulch also is one of the few trails that allows off-leash dogs, so it is particularly popular with dog owners (Singletracks 2006, p. 1; Trailcentral 2010, p. 1; Localhikes.com undated, p. 1). Horseback riding, cross-country skiing, backcountry camping, and hunting also are allowed (Two Knobby Tires 2009, p. 1). A USFS campground is located adjacent to where the Arapahoe snowfly was found in Young Gulch.

Information in our files supports the assertion in the petition that mountain biking can cause soil erosion and compaction, degraded water quality, trail widening, and changes in vegetation (Goeft and Alder 2001, p. 193; International Mountain Biking Association 2007, p. 1). Eroded soil can enter water bodies at stream crossings, resulting in sedimentation that can affect aquatic organisms and contribute to algal blooms that deplete dissolved oxygen (International Mountain Biking Association 2007, p. 8). Sedimentation in the stream substrate can clog pore spaces in the substrate, resulting in a decrease in invertebrates that depend on a well-oxygenated hyporheic zone (Anderson 1996, p. 6). Hiking and horseback riding can have similar effects, and animal waste may have an additional impact on water quality (Mazzacano undated, p. 2). In addition, the total number of species of aquatic insect larvae (including stoneflies) present in a stream decreases as the number of stream crossings increases (Gucinski *et al.* 2001, p. 26). Young Gulch is estimated to have 30–48 stream crossings (Singletracks 2006, p. 1; Two Knobby Tires 2009, p. 1; Trailcentral 2010, p. 1; Localhikes undated, p. 1).

Recreational use is currently lower in Elkhorn Creek than in Young Gulch (USFS 2009a, p. 4). However, construction of a parking area for 12 cars and 6 trucks pulling horse trailers is under way, to provide improved access for hikers, bikers, and horseback riders (USFS 2009b, p. 4). The Elkhorn Creek watershed is currently rated as Class II, or "at risk" of no longer being able to support its beneficial uses related to native plants and wildlife, soils, and watershed functions, with several areas where roads and trails are causing increased runoff and erosion into the Creek (USFS 2009a, p. 48). Class-II watersheds exhibit some impairment relative to their potential optimum condition (USFS 2009a, p. 48). Taxa in the order Plecoptera (stoneflies), which includes the Arapahoe snowfly, are sensitive to impaired water quality caused by run-off and erosion, and their numbers will decrease with a decrease in water quality (Baumann 1979, p. 241; Hart *et al.* 1991, p. 136; Williams and Feltmate 1992, p. 35; Rosenberg and Resh 1993, p. 244; Barbour *et al.* 1999, pp. 7.15–7.16).

Most visitors to USFS lands are from local areas (USFS 2008b, p. 8). The population of nearby Fort Collins has grown in recent years (City of Fort Collins 2008, p. 1; City of Fort Collins 2009, p. 1). Consequently, recreational use at Elkhorn Creek and Young Gulch is likely to increase (USFS 2009b, p. 1). Increased recreational use will likely increase erosion and resultant sedimentation in both streams. Water quality in both streams also is likely to decrease, due to the introduction of more animal waste.

Information we have in our files supports the assertion in the petition that the recreational use documented for Elkhorn Creek and Young Gulch will increase the rate of erosion of sediments and the amount of fecal deposition into those streams. However, the only site-specific water quality information we have is that the Elkhorn Creek watershed is currently rated as Class II, or "at risk" of no longer being able to support its beneficial uses, with several areas where roads and trails are causing increased runoff and erosion into the creek (USFS 2009a, p. 48). Young Gulch currently receives more recreational use than Elkhorn Creek. Consequently, we assume that similar impacts to the Young Gulch watershed are likely. More detailed water quality information is not available. Taxa in the order Plecoptera (stoneflies), which includes the Arapahoe snowfly, are sensitive to most types of pollution, and their numbers will decrease with a decrease in water quality (Baumann 1979, p. 241; Hart *et al.* 1991, p. 136; Williams and Feltmate 1992, p. 35; Rosenberg and Resh 1993, p. 244; Barbour *et al.* 1999, pp. 7.15–7.16). Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information indicating that recreational use in both Elkhorn Creek and Young Gulch may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Grazing—Three active allotments lie within the Elkhorn Creek watershed, including one directly upstream from known Arapahoe snowfly habitat (USFS 2009a, p. 56). No active grazing allotments occur within the Young Gulch watershed. The effects of cattle grazing on stream water quality in the western United States have been well documented, and include increased soil erosion, sedimentation, fecal deposition, and water temperature, as well as decreased dissolved oxygen and willow canopy (Chaney *et al.* 1993, p. 6; Fleischner 1994, pp. 631–635; Belsky *et al.* 1999, p. 420; Agouridis *et al.* 2005, p. 592; Holland *et al.* 2005, p. 149; Coles-Ritchie *et al.* 2007, p. 733; McIver and McInnis 2007, p. 294). Livestock excrement elevates streamwater concentrations of inorganic phosphorus and nitrogen, which in turn increases growth of filamentous algae and production by microbes that can reduce dissolved oxygen concentrations (Strand and Merrit 1999, p. 17).

Reduced concentrations of dissolved oxygen can adversely affect stonefly

nymphs, which have high oxygen requirements (Williams and Feltmate 1992, p. 39). Overall, these changes can result in decreased populations of invertebrates that require cleaner, colder waters and coarser substrates (Belsky *et al.* 1999, p. 424). When this occurs, sensitive taxa such as stoneflies are typically replaced by more tolerant taxa such as Chironomidae (Braccia and Reese Voshell 2007, p. 186; McIver and McInnis 2007, p. 301). We have no site-specific water quality data regarding concentrations of phosphorus, nitrogen, or dissolved oxygen, or water temperature or other parameters affected by fecal deposition from livestock. We also have no site-specific data regarding sedimentation caused by livestock disturbance. However, based upon the presence of known active grazing allotments in the Elkhorn Creek watershed, and well-documented impacts to water quality caused by grazing at other streams in the western United States, there appears to be substantial information indicating that grazing may be negatively impacting the species. Based on the above evaluation, we find that the information in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information indicating that livestock grazing may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Forest Management Practices—The forest management practices noted by the petition were control of the mountain pine beetle and the Red Feather Fuels Reduction Project. Both of these management practices could result in increased road use or the construction of new roads (USFS 2009a, RAP Appendix). We address impacts from roads in the following "Development" section. Effects from spraying insecticide, tree thinning, and controlled burns are discussed in this section.

Recent mountain pine beetle outbreaks have killed millions of trees in Colorado (Black *et al.* 2010, p. 3). Mountain pine beetle infestations are building in ponderosa pine forests along the Colorado Front Range, including in Larimer County (Ciesla 2010, p. 2). Control of the mountain pine beetle in the Canyon Lakes Ranger District includes use of the insecticide carbaryl. The USFS crews sprayed more than 11,000 infested trees in 2009 and 16,000 infested trees in 2010 in the Canyon Lakes Ranger District, with some locations near Elkhorn Creek, including campgrounds at West and Bellaire Lakes (USFS 2009c, p. 1; Matheson 2010, p. 16). Despite the existence of no-spray buffer zones near aquatic habitats, insecticide can be deposited in streams via aerial drift or runoff from adjacent upland areas (Beyers *et al.* 1995, p. 27). Stoneflies are particularly sensitive to carbaryl. The EPA rated carbaryl as "very highly toxic" to aquatic invertebrates, and used a species of stonefly (*Chloroperla grammatica*) as one of the test species in their evaluation (EPA 2004, p. 46). We assume that, as a species of stonefly, the Arapahoe snowfly would be similarly vulnerable. Another study reported that virtually all stoneflies were dead following an application of carbaryl (Courtemanch and Gibbs 1980, as reported by Beyers *et al.* 1995, p. 32). In a healthy invertebrate population, colonization by unaffected organisms living upstream would probably compensate for this mortality (Beyers *et al.* 1995, p. 32). However, a narrow endemic such as the Arapahoe snowfly could potentially be extirpated. Therefore, there appears to be substantial information indicating that the use of carbaryl to control the ongoing outbreak of mountain pine beetles may be a potential threat to the Arapahoe snowfly. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information indicating that the use of carbaryl to control the ongoing outbreak of mountain pine beetles may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

The ongoing Red Feather Fuels Reduction Project includes thinning of forest stands and controlled burns. Tree removal associated with thinning can increase sedimentation within the drainage basin (Anderson 1996, p. 1). Increased sedimentation can reduce exchange between surface waters and the hyporheic zone, and, without flow to renew nutrients and oxygen and flush wastes, the sediments become unsuitable for invertebrates that utilize this zone (Hancock, 2002, p. 764). Arapahoe snowfly nymphs depend upon the hyporheic zone as habitat to undergo diapause during the summer months (Mazzacano undated, p. 1). However, as noted by the petitioners, an intense wildfire in the Elkhorn Creek drainage, which would be more likely to occur without fuel reduction, could be catastrophic for the species. The responses of aquatic invertebrates to fire are indirect and vary widely, with some studies showing a decline in abundance, species richness, and diversity, and others showing a long-term increase in these same parameters (Neary *et al.* 2008, pp. 142–143). Consequently, there is not substantial information to suggest that the Red Feather Fuels Reduction Project is likely to adversely impact the Arapahoe snowfly. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that the Red Feather Fuels Reduction Project may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Development—The petition asserts that development from roads, dewatering, and septic systems associated with the Red Feather Lakes community poses a risk to the Arapahoe snowfly. Red Feather Lakes has approximately 600 residents, as well as several tourist facilities. At its closest point, Elkhorn Creek comes within approximately 2.5 mi (4 km) of Red Feather Lakes.

Information in our files supports the fact that road construction and subsequent use and maintenance can result in increased erosion and sedimentation of streams, as well as decreased water quality due to accidental spills and use of deicers (Cederholm *et al.* 1980, p. 1; Anderson and Potts 1987, p. 681; Furniss *et al.* 1991, p. 302; Forman and Alexander 1998, p. 219; Trombulak and Frissell 2000, p. 18; Fischel 2001, p. ii; Gucinski *et al.* 2001, pp. 24–25; Angermeir *et al.* 2004, p. 19; Center for Environmental Excellence 2009, pp. 4–7). Increased sedimentation can compromise the hyporheic zone, upon which Arapahoe snowfly nymphs depend (Mazzacano undated, p. 1). We are not aware of any road crossings or roads running adjacent to Young Gulch. There are several areas where roads and trails along Elkhorn Creek are causing increased runoff and erosion, and the watershed is rated as Class II or "at risk" (*i.e.,* the watershed exhibits moderate integrity relative to its potential condition and is at risk of no longer being able to support its beneficial uses) (USFS 2009a, p. 48). Total average road density in the Red Feather Lakes area of the Canyon Lakes Ranger District is 3.5 mi of road per square mile (mi^2) (2.2 km of road per square kilometer (km^2), with five stream crossings in the Elkhorn Creek watershed (USFS 2009a, RAP Appendix). Additional temporary roads will be constructed during the Red Feather Fuels Reduction Project and later rehabilitated; however, they will be in upland areas, at least 100 ft (30 m) from any streams or riparian areas (USFS 2008, p. 10).

The Elkhorn Creek watershed is currently rated as Class II, or "at risk" of no longer being able to support its beneficial uses, with several areas where roads and trails are causing increased runoff and erosion into the Creek (USFS 2009a, p. 48). Based upon the presence of roads in the Elkhorn Creek watershed, including several stream crossings of Elkhorn Creek, there appears to be substantial information indicating that erosion from roads may be adversely impacting the species. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information indicating that erosion from roads in the Elkhorn Creek watershed may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

The Colorado Department of Transportation uses magnesium chloride liquid deicers on mountain roads (Lewis 1999, p. i). Deicers can increase salinity of nearby water bodies that receive runoff from roads, which in turn degrades habitat for aquatic organisms (Kaushal *et al.* 2005, p. 13517). If streams are frozen, flushing may not occur until temperatures rise in the spring (Silver *et al.* 2009, p. 942). Stoneflies are not commonly found in waters where salinities are greater than 1,000 milligrams per Liter (mg/L) (1,000 parts per million (ppm)) (Hart *et al.* 1991, pp. 124, 136). Most studies indicate that contamination begins to decline within 66 ft (20 m) from the road, but may occur 660 ft (200 m) or more from the road (Trombulak and Frissell 2000, p. 22). We have no information indicating what the amount of deicer used on these roads may be, or if any of the roads where deicer is used are near Elkhorn Creek or Young Gulch. We also do not have any evidence that these stream systems are impacted by deicers. Consequently, there is not substantial information that deicers are likely to adversely impact the Arapahoe snowfly. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that deicers may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Existing and proposed water rights, associated with private lands in and around Red Feather Lakes, allow well construction and irrigation diversion, and may result in dewatering of adjacent streams (Red Feather Historical Society 2004, p. 4; Colorado Water Conservation Board 2009, p. 10). Based upon topographic maps, these water rights appear to be predominantly in the Gordon Creek and Lone Pine watersheds adjacent to Elkhorn Creek. We have no information indicating that these diversions may have an impact on the Elkhorn Creek watershed. Similarly, septic systems in and around Red Feather Lakes appear to be located predominantly in the Gordon Creek and Lone Pine watersheds, and not the Elkhorn Creek watershed (Red Feather Historical Society 2004, p. 4; Colorado Water Conservation Board 2009, p. 10). However, one wastewater treatment facility is located on Elkhorn Creek (George Weber Environmental, Inc. 2007, p. 11). Effluents in wastewater discharge may concentrate in the hyporheic zone (Hancock 2002, pp. 763–764). However, we have no information indicating that these septic systems and treatment facility are impacting the Elkhorn Creek watershed. Consequently, there is not substantial information that dewatering or septic systems is likely to adversely impact the Arapahoe snowfly. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that dewatering or septic systems may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Barriers to Dispersal—Most stoneflies are clumsy fliers that have difficulty crossing even small ecological barriers (Hynes 1976, p. 135). Consequently, they are poor dispersers (Lillehammer *et al.* 1989, p. 173). However, precise dispersal capabilities for the Arapahoe snowfly are unknown (Mazzacano undated, p. 2). The species has unusually large wings for a stonefly (Nelson and Baumann 1989, p. 312), but there is no information indicating what effect this may have on dispersal capabilities. There also is no information regarding whether the species uses the Cache la Poudre River as a dispersal corridor. Typically, adult stoneflies fly upstream along the stream corridor prior to mating and laying eggs (Macneale *et al.* 2005, p. 1127) and, therefore, would not likely use the river, which is downstream of the locale. Dispersal of larval stoneflies can include downstream drift and upstream movement (Peterson *et al.* 2004, p. 935), so it is possible that larvae could drift downstream into the river. Upstream portions of the river, which would include the confluences with Elkhorn Creek and Young Gulch, are considered generally pristine, with no contaminants detected during several years of routine sampling (George Weber Environmental, Inc. 2007, p. 7). In Fort Collins, the river is highly modified, with reduced flow, increased water temperature, and nutrient loading that are detrimental to aquatic insects (City of Fort Collins 2008a, pp. 5–7). However, the river reach through Fort Collins does not have the necessary habitat for the species and is many miles downstream from Elkhorn Creek and Young Gulch. Consequently, there is not substantial information that barriers to dispersal are likely to adversely impact the Arapahoe snowfly. Based on the above evaluation, we find that the information provided in the petition, as well as other information readily available in our files, does not present substantial scientific or commercial information indicating that barriers to dispersal may pose a threat to the Arapahoe snowfly such that the petitioned action may be warranted.

Summary of Factor A

Based upon the information provided in the petition, as well as other information readily available in our files, and considering the very limited range of the Arapahoe snowfly and its apparent small numbers, we find that the petition presents substantial scientific or commercial information indicating that the Arapahoe snowfly may warrant listing due to the present or threatened destruction, modification, or curtailment of the species' habitat or range primarily due to: (1) Sedimentation caused primarily by erosion from recreation, livestock grazing, and roads; (2) reduced concentrations of dissolved oxygen caused by nutrient enrichment from waste deposition during recreation and livestock grazing; and (3) the use of carbaryl to control the ongoing outbreak of mountain pine beetles. There is not substantial information to indicate that tree thinning, controlled burns, deicers, dewatering, septic systems, or barriers to dispersal are causing noticeable impacts within the Elkhorn Creek or Young Gulch watersheds. We will assess all of these stressors more thoroughly during our status review in order to better quantify potential effects on the Arapahoe snowfly.

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

The petition notes that the Arapahoe snowfly is not used commercially and is not at risk of over collection. Neither the petition nor information within our files

presents substantial scientific or commercial information that collection was, or is, occurring at a level that impacts the overall status of the species. Therefore, we find the petition does not present substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Arapahoe snowfly such that the petitioned action may be warranted. However, we will assess this factor more thoroughly during our status review for the species.

C. Disease or Predation

Information Provided in the Petition

The petition notes that disease and predation are not known to threaten the Arapahoe snowfly. However, the petition also notes that threats from disease and predation have never been assessed. The petition asserts that the rarity and limited range of the species make it more vulnerable to extinction from normal population fluctuations resulting from disease or predation.

Evaluation of Information Provided in the Petition and Available in Service Files

We address the potential risks due to a small population size under Factor E. We reviewed information in our files and the information provided by the petition, and did not find substantial information to indicate that disease or predation may be outside the natural range of variation such that either could be considered a threat to the Arapahoe snowfly. Therefore, we find the petition does not present substantial scientific or commercial information to indicate that disease or predation may present a threat to the Arapahoe snowfly such that the petitioned action may be warranted. However, we will assess this factor more thoroughly during our status review for the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition claims that the Arapahoe snowfly receives no recognition or protection under Federal or state law. The petition notes that it is recognized as "critically imperiled" by Colorado's Natural Heritage Program. This designation means that the species is considered to be at very high risk of extinction due to extreme rarity (five or fewer populations), very steep declines, or other factors. However, this designation does not provide any protection for the species or its habitat. The petition notes that the Arapahoe snowfly is not listed as a "sensitive species" by the USFS. On June 23, 2003, we designated a portion of the Cache la Poudre River, including the confluences of Elkhorn Creek and Young Gulch, as critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (68 FR 37275). On December 15, 2010, we published a revised critical habitat rule for Preble's meadow jumping mouse, reaffirming the designation of this area (75 FR 78429). However, the petition notes that this designation does not affect any upstream activities, and there is no signage within the critical habitat area of Elkhorn Creek and Young Gulch indicating the presence of the mouse. Therefore, the petition asserts that the Arapahoe snowfly derives no protection from the critical habitat designation.

Evaluation of Information Provided in the Petition and Available in Service Files

The Arapahoe snowfly currently receives no direct protection under Federal or State law. It is designated as "critically imperiled" at both the State and global level by Colorado's Natural Heritage Program and NatureServe (NatureServe 2009, p. 1), respectively, but, as previously noted, this designation does not provide any legal protection for the species or its habitat. The Colorado Natural Heritage Program has proposed a Potential Conservation Area (PCA) for the species that would encompass approximately 5,000 acres (ac) (2,000 hectares (ha)) and include portions of both Elkhorn Creek and Young Gulch (CSU 2005, p. 2). This PCA has a Biodiversity Significance Rank of B1 for outstanding biodiversity significance. This is the highest level of biological diversity that can be assigned to a site. A PCA can provide planning and management guidance, but infers no legal status. The Arapahoe snowfly is designated as a "species of greatest conservation need" by Colorado Division of Wildlife, based upon its global and State ranking by the Colorado Natural Heritage Program (Colorado Division of Wildlife 2006, pp. 17, 20), but this also confers no protection.

The Arapahoe snowfly occurs on USFS lands and is protected indirectly by general Federal laws and regulations mandating how USFS lands are managed. However, no direct protection of the Arapahoe snowfly is provided by USFS.

Projects conducted within the species' occupied habitat may be subject to the requirements of the National Environmental Policy Act of 1970 (42 U.S.C. 4321 *et seq.*) (NEPA). All Federal agencies are required to adhere to NEPA for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives, any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal action. NEPA is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for sensitive species as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute.

Both stream reaches where the Arapahoe snowfly has been located are included in critical habitat designated for the Preble's meadow jumping mouse in 2010. Critical habitat extends 360 ft (110 m) from the edge of the stream on both sides for Young Gulch, and extends 394 ft (120 m) from the edge of the stream on both sides for Elkhorn Creek. The bodies of the streams are not included. This designation indirectly provides some protection to the Arapahoe snowfly through section 7(a)(2) of the Act, which requires Federal agencies to confer with us on any action funded, authorized, or carried out by a Federal agency that is likely to jeopardize the continued existence of the Preble's meadow jumping mouse or destroy or adversely modify its critical habitat.

Examples of specific actions that may adversely affect Preble's meadow jumping mouse critical habitat and therefore require consultation include land clearing, road construction, grazing, water diversions, and activities that change water, sediment, or nutrient inputs, or that significantly and detrimentally alter water quantity (75 FR 78456). Any other activities that might adversely affect critical habitat would also require consultation. However, actions that do not affect the Preble's meadow jumping mouse or its habitat, or do not have a Federal nexus, would not require consultation. Additionally, Federal actions that occurred prior to 2003 did not require consultation because critical habitat for the Preble's meadow jumping mouse had not yet been designated. Consequently, there was no potential benefit to the Arapahoe snowfly with regard to these types of actions before the 2003 critical habitat designation.

Although there are no regulatory mechanisms that directly protect the Arapahoe snowfly, its habitat may be protected from future adverse impacts caused by Federal actions that impact Preble's meadow jumping mouse critical habitat. It is not clear whether the existing regulatory mechanisms, including consultation with Federal agencies under section 7 of the Act, adequately protect the Arapahoe snowfly from potential threats such as those determined to be substantial under Factor A. At this phase in the review process, we cannot seek input from outside agencies such as the USFS. However, we intend to contact them during the status review regarding any additional information that they may be able to provide on the extent to which their existing regulatory mechanisms serve to protect the Arapahoe snowfly.

There is uncertainty about whether or not existing regulatory mechanisms are adequate for protecting Arapahoe snowfly. The petitioners present information for further consideration of this factor. The fact that the known sites lie within the designation of Preble's meadow jumping mouse critical habitat offers the Arapahoe snowfly some protection from several potential threat factors. Additionally, Arapahoe snowfly-occupied habitat is on USFS lands that are subject to general Federal laws and regulations mandating how those lands are managed. Given the level of information that we have at this 90-day finding stage, it is unclear whether the regulatory mechanisms pertaining to Preble's meadow jumping mouse critical habitat and impacts from Factor A are inadequate. We recognize that the information presented in Factor A was substantial. Consequently, we will assess all factors, including the adequacy of existing regulatory mechanisms, more thoroughly during our status review for the species, including consideration of stressors existing in the immediate vicinity of occupied habitat, as well as stressors that exist upstream from the critical habitat designation.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition asserts that small population size and climate change threaten the Arapahoe snowfly. The petition presents one citation that supports that small populations are generally at greater risk of extinction from normal population fluctuations, natural disasters, and loss of genetic diversity (Shaffer 1981, p. 131). The petition provides several citations describing current and future impacts in the western United States from climate change (Rood *et al.* 2005, p. 217; Field *et al.* 2007, p. 623; Barnett *et al.* 2008, p. 1080; Saunders *et al.* 2008, p. 42). The petition asserts that global climate change may impact the species through increased floods and droughts and management actions taken in response to the proliferation of mountain pine beetles.

Evaluation of Information Provided in the Petition and Available in Service Files

Small Population Size—The Arapahoe snowfly is currently known to occur only at one site on Elkhorn Creek near its confluence with the Cache la Poudre River. It is likely extirpated from the other known location on Young Gulch. The species is apparently rare at its only known occupied habitat on Elkhorn Creek—during routine survey work from 2007 through 2009, only 5 of the 500 *Capnia* stoneflies collected were identified as the Arapahoe snowfly (Matheson *et al.* 2010, p. 7). Information in our files supports the information presented in the petition that a species with such limited distribution and rarity is vulnerable to extinction from systematic pressures or stochastic (random) disruptions (Shaffer 1981, p. 131). This vulnerability is increased when threats are present. Systematic pressures on the Arapahoe snowfly include impacts on habitat from sedimentation caused by recreational use, livestock grazing, and road construction. Potential stochastic disruptions could include natural catastrophes such as flood, fire, and drought, or genetic changes resulting from limited genetic diversity.

Based upon the information discussed under Factor A, and considering the very limited range of the Arapahoe snowfly and its apparent rarity, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to the species' small population size. Such a small population is more vulnerable to systematic pressures such as those described above, and any adverse effects are likely exacerbated. However, there is not sufficient information to indicate that stochastic disruptions are likely. We will assess all of these stressors more thoroughly during our status review in order to better quantify potential effects on the Arapahoe snowfly.

Climate Change—According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 6), "warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." Average Northern Hemisphere temperatures during the second half of the 20th century were very likely the highest in at least the past 1,300 years (IPCC 2007, p. 6). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, while hot days and hot nights have become more frequent (IPCC 2007, p. 6). It is likely that heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 6).

Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century (IPCC 2007, p. 19). For the next two decades, a warming of about 0.4 °F (0.2 °C) per decade is projected (IPCC 2007, p. 19). By the end of the 21st century, average global temperatures are expected to increase 1.1 to 7.2 °F (0.6 to 4.0 °C) from current temperatures, with the greatest warming expected over land (IPCC 2007, p. 20). Several scenarios are virtually certain or very likely to occur in the 21st century, including: (1) Over most land, there will be warmer days and nights in general, fewer cold days and nights, and more frequent hot days and nights; (2) areas affected by drought will increase; and (3) the frequency of warm spells and heat waves over most land areas will likely increase (IPCC 2007, pp. 22, 27). The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (*e.g.,* flooding, drought, wildfire, and insects), and other global drivers. With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 3 to 5 °F (1.5 to 2.5 °C).

The western United States is being affected more by a changed climate than any other part of the United States outside of Alaska (Saunders *et al.* 2008, p. iv). Colorado is 3.1 °F (1.7 °C) warmer over the past 100 years (Saunders *et al.* 2008, p. 42). Numerous studies of the western United States show more winter precipitation falling as rain instead of snow, earlier snow melt, and associated changes in river flow (Barnett *et al.* 2008, p. 1080). Sensitive coldwater species are likely to be stressed by increasing water temperatures (Rood *et*

al. 2005, p. 217). Disturbances such as wildfire and insect outbreaks are increasing and are likely to intensify with drier soils and a longer growing season (Field *et al.* 2007, p. 619). The mountain pine beetle has expanded its range into areas previously too cold to support it (Field *et al.* 2007, p. 623; Saunders *et al.* 2008, pp. 21, 23). The USFS predicts that in Colorado and southern Wyoming, mountain pine beetles will likely kill the majority of mature lodgepole pine forests within the next 3 to 5 years (Saunders *et al.* 2008, pp. 21 and 23).

Aquatic insects may respond to elevated temperatures in the following ways: (1) Behaviorally, by emigrating from, or changing distribution within, stressed regions; or (2) physiologically, by adjusting the duration and extent of growth and development in immature stages, and ultimate size, condition, and fecundity as adults (Williams and Feltmate 1992, p. 285). Impacts from global warming will vary greatly at the species level (Williams and Feltmate 1992, p. 287). The Arapahoe snowfly will likely be affected by warmer streamflows and by continuing outbreaks of mountain pine beetle. However, we cannot predict the extent to which the species will be able to adjust behaviorally or physiologically to these changes. We will assess this factor more thoroughly during our status review for the species.

In summary, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to other natural or manmade factors affecting its continued existence such as the apparent small population size of the Arapahoe snowfly, especially given the stressors it faces from recreation, grazing, and certain forest management practices. The species also will likely be affected by climate change; however, we cannot currently predict the extent to which it will be able to adjust to these changes.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the Arapahoe snowfly throughout its entire range may be warranted. This finding is based on information provided under factors A and E. The information provided in the petition under factors B, C, and D is not substantial.

We are not aware of any information regarding impacts from factors A and E that specifically pertains to the Arapahoe snowfly. However, there is adequate information documenting that recreation, grazing, carbaryl spraying, and road usage are ongoing in Elkhorn Creek and that recreation is occurring in Young Gulch. There also is adequate information documenting the likely adverse effects of these activities on stoneflies. Consequently, we have concluded that since the Arapahoe snowfly is a species of stonefly, it is likely being adversely affected by these activities, particularly in view of its very narrow known range and rarity within that range. We will assess all of these factors more thoroughly during our status review for the species.

Because we have found that the petition presents substantial information indicating that listing the Arapahoe snowfly may be warranted, we are initiating a status review to determine whether listing the Arapahoe snowfly under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* or upon request from the Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff members of the Regional Office and the Colorado Field Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 2011.

Rowan Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–9973 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0007; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Smooth-Billed Ani as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the smooth-billed ani (*Crotophaga ani*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial information indicating that listing the species may be warranted. Therefore, we are not initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the smooth-billed ani or its habitat at any time.

DATES: The finding announced in this document was made on April 26, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0007. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, Florida 32960–3559. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Spencer Simon, Assistant Field Supervisor, of the South Florida Ecological Services Office (see **ADDRESSES**) by telephone 772–562–3909, or by facsimile to 772–562–4288. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to

list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register.**

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On April 5, 2005, we received a petition, dated March 23, 2005, from Robert Showler of Homestead, Florida, requesting that the smooth-billed ani (*Crotophaga ani*), a bird, be listed as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner(s), as required by 50 CFR 424.14(a). In an April 29, 2005, letter to the petitioner, we responded that we received the petition for the smooth-billed ani, and that because of inadequate funding for listing-related actions pursuant to court orders and judicially approved settlement agreements, we would not be able to address the petition at that time. We also noted that the species had been included on the list of birds of conservation concern in peninsular Florida in 2002 and that we had begun to compile information on this and other species of conservation concern in peninsular Florida. This finding addresses the petition.

Species Information

The smooth-billed ani (*Crotophaga ani*) is a member of the Family Cuculidae (cuckoo family). We concur with the petition's taxonomic characterization of the smooth-billed ani (*Crotophaga ani*) as a species. This species is a resident in parts of Florida, the Caribbean, Mexico, and Central and South America (Stevenson and Anderson 1994, p. 355; Quinn and Startek-Foote 2000, section 3, p. 1). The smooth-billed ani is a medium-sized cuculid, with a length of 12–14 inches (30–36 centimeters) and a mass of approximately 3.5 ounces (100 grams) (Ridgway 1916 and Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 2, p. 1). Males tend to be slightly larger than females (Quinn and Startek-Foote 2000, section 2, p. 1). This species is distinguished by: all-black plumage, glossed with greenish or violet iridescence in parts; a long tail (approximately 6.8 in (17.2 cm)); a large, arched, and laterally compressed bill, usually showing a raised hump on the basal half of the upper mandible; and a distinctive call, including a whining "ah-nee," which is usually delivered 1–4 times, along with other vocalizations (Quinn and Startek-Foote 2000, section 1, p. 1; section 2, p. 1; section 8, p. 1). Immature birds resemble adults, but their plumage contains a mixture of dull and glossy blackish feathers, and the bill is slightly shallower (Quinn and Startek-Foote 2000, section 2, p. 1). Juveniles are also similar in appearance to adults, but with plumage that is entirely dull blackish in color with little or no gloss, and a smaller bill without a raised hump (Quinn and Startek-Foote 2000, section 2, p. 1).

The smooth-billed ani occurs over a considerable global geographic range. It is considered a resident from central Florida south through the Caribbean, and south into Central and South America through Ecuador and northern Argentina, except in the Andes (Stevenson and Anderson 1994, p. 355; Quinn and Startek-Foote 2000, section 3, p. 1). The species is generally nonmigratory; however, some local movement occurs during the dry season, when many groups leave their territories and gather in large flocks with neighboring groups (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 5, p. 1). Records in the Dry Tortugas suggest some movement between the Caribbean and Florida (Robertson and Woolfenden 1992 as cited in Mlodinow and Karlson 1999, p. 241). This species may regularly disperse from the Bahamas and Cuba to Florida (Mlodinow and Karlson 1999, p. 242). The smooth-billed ani has been described as a casual occurrence north to North Carolina and west to Louisiana (Stevenson and Anderson 1994, p. 355). Vagrant records elsewhere in the United States are scarce; few acceptable records outside of Florida exist (*e.g.,* New Jersey or Pennsylvania, North Carolina, South Carolina, and Georgia) (Mlodinow and Karlson 1999, pp. 241–242).

Throughout its range, and year round, the smooth-billed ani occupies savanna, disturbed and human-altered rural and suburban areas, open areas with brush or scrub, plantations, gardens, farmlands, and forest clearings (Quinn and Startek-Foote 2000, section 6, p. 1). Preferred habitat is considered to be open grassland (Blanchard 2000, p. 5). In Puerto Rico, Guyana, Cuba, Jamaica, Colombia, and the Galápagos Islands, this species uses cow pastures and adjacent lands (Quinn and Startek-Foote 2000, section 6, p. 1). In south Florida, density was positively correlated with amount of grazing lands and human habitation (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 6, p. 1). In general, this species typically occupies lowlands, often near the coast, preferring a source of water (*e.g.,* marsh, pond, river) and avoiding dense forest (Quinn and Startek-Foote 2000, section 6, p. 1). In a study area in south Florida, the smooth-billed ani was found to occupy discontinuous patches of habitat (*e.g.,* parks, nurseries, small undeveloped plots of land) and avoid tall grasses of the Everglades (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 6, p. 1). Additionally, the species has been found within and near impoundments within the Loxahatchee National Wildlife Refuge (NWR) (Service 1997, p. 48; 1998, p. 50; 1999a, p. 65; 2003a, pp. 113–114) and on various outer islands within the Florida Keys NWR Complex (Service 1992, p. 85; 1999b, p. 60; 2001, p. 69; 2003b, p. 84).

This species feeds primarily on insects and small vertebrates, especially when these forage items are abundant during the rainy season; fruit is an important component of the diet during the dry season (Quinn and Startek-Foote 2000, section 1, p. 1 and section 7, pp. 1–2; Blanchard 2000, p. 5). Fields of grass are typically used for foraging; more densely vegetated stream edges may be used for nesting and roosting (Quinn and Startek-Foote 2000, section 6, p. 1; Blanchard 2000, p. 5). The smooth-billed ani is a highly social bird that nests, roosts, feeds, and travels in pairs or in communal groups (Quinn and Startek-Foote 2000, section 9, p. 3; Blanchard 2000, pp. 5–6). This species uses a communal breeding system in which a number of females lay eggs and incubate in the same nest; late-laying females bury the eggs of early-laying females with twigs and leaves, which can create a number of layers, but only the top layer of eggs eventually hatches (Quinn and Startek-Foote 2000, section 1, p. 1; Blanchard 2000, pp. 1–101). Blanchard (2000, p. 30) found evidence for monogamy, polygamy (extra-pair fertilizations), and brood parasitism (egg-laying in the nests of other birds) in

both single-pair and group nests in a study of the species' communal breeding system in Puerto Rico. Observed nesting groups of smooth-billed anis ranged from a single pair to 12 adults and nests containing more than 30 eggs (Blanchard 2000, p. 11). Female-female competition at the nest may result in the destruction of other females' eggs through egg burial under nesting material (Blanchard 2000, p. 11).

The smooth-billed ani has a large global population, estimated in 2004 to be 20,000,000 individuals, with less than or equal to 1 percent occurring in the United States (Rich et al. 2004, p. 70). Global long-term trend data did not exist at that time (Rich et al. 2004, p. 70). In general, little information on global population size or trends was available in Service files at the time the petition was received. Available information suggested that the smooth-billed ani's conservation status was "not threatened" (Quinn and Startek-Foote 2000, section 12, p. 1). The species was not recognized as a National Audubon Society Watch List Species or Stewardship Species (Rich *et al.* 2004, p. 70). The Audubon Watch List categorizes species on the list if they are declining rapidly and/or have very small populations or limited ranges and face major conservation threats (*e.g.,* typically species of global conservation concern) or if the species are either declining or rare (*e.g.,* typically species of national conservation concern).

The smooth-billed ani is an uncommon-to-rare resident of southern Florida (Mlodinow and Karlson 1999, p. 241). Prior to the 1930s, few records existed in Florida, suggesting that the species was rare or poorly known (Quinn and Startek-Foote 2000, section 3, p. 2). Sprunt (1939, pp. 335–336) documented the first record of breeding in Florida in 1938. By the late 1930s, the species was considered established in the Lake Okeechobee area, and subsequently breeding was recorded elsewhere in south Florida (Quinn and Startek-Foote 2000, section 3, p. 2). The species' status in Florida remained relatively unchanged until the 1960s, when increasing numbers were recorded in central and north Florida (Quinn and Startek-Foote 2000, section 3, p. 2). Based upon National Audubon Society Christmas Bird Counts, the number observed per party hour (p-hr) (average number of counts per party per hour spent censusing) tripled by 1962–63, reaching 0.17 per p-hr in West Palm Beach and 2.41 per p-hr in Fort Lauderdale (Mlodinow and Karlson 1999, p. 241). In the 1960s the species was fairly common to common from the Everglades north to Brevard County on the east coast and Lee County on the west coast (Mlodinow and Karlson 1999, p. 241). By 1968–69, the number observed reached 1.51 per p-hr in West Palm Beach and 4.20 per p-hr in Fort Lauderdale (Mlodinow and Karlson 1999, p. 241).

Numbers appeared to have peaked in Florida during the period 1968–1976, when the species was recorded north to Jacksonville Beach (Duval County) in the east and St. Petersburg (Hillsborough County) in the west (Mlodinow and Karlson 1999, p. 241; Quinn and Startek-Foote 2000, section 3, p. 2). At that time, numbers observed were typically in the 3.0–4.0 per p-hr range in Fort Lauderdale, while Fort Pierce reached 1.87 per p-hr and Sanibel Island/Captiva Island reached 0.41 per p-hr (Mlodinow and Karlson 1999, p. 241). By winter 1977–1978, numbers had declined sharply, returning to mid-1960s levels (Mlodinow and Karlson 1999, p. 241). This decline continued, and by 1988–1989, total numbers were comparable to those reported in the 1950s (Mlodinow and Karlson 1999, p. 241). The decline continued in Florida into the 1990s, and by 1998, the smooth-billed ani was found locally from the Florida Keys north to West Palm Beach on the east coast, and north to Collier County on the west coast (Mlodinow and Karlson 1999, pp. 241–242). Mlodinow and Karlson (1999, p. 242) suggested that the status of the smooth-billed ani in Florida in 1998 may be the norm rather than an aberration.

Available information in Service files suggests that the species uses Loxahatchee NWR (Service, annual narrative reports from 1996 to 2005) and the Florida Keys NWR Complex (Service, annual narrative reports from 1939 to 2003). According to a notation in the 2000 annual narrative report from Loxahatchee NWR, local long-time birders have indicated that the numbers of smooth-billed anis in south Florida and on the Refuge have declined significantly and that annual Christmas Bird Counts are showing the same trend (Service 2000, p. 110).

The reasons for expansion and contraction of the species' range in Florida are not known. Expansion may have been facilitated by residential development, which resulted in anthropogenic habitat changes that initially favored this species (Mlodinow and Karlson 1999, p. 242). However, continued residential and agricultural development, which reduced suitable habitat, and exceptionally cold winters during the 1970s may have contributed to subsequent declines (Stevenson and Anderson 1994, p. 357; Mlodinow and Karlson 1999, p. 242). Overall, the reasons for the decline in south Florida are not clear (Mlodinow and Karlson 1999, p. 242; National Audubon Society 2001, p. 335).

The smooth-billed ani was one of 668 taxa evaluated in an effort to help prioritize vertebrate conservation efforts in Florida (Millsap *et al.* 1990, pp. 3–57). The evaluation system ranked taxa (species and subspecies) according to biological vulnerability, extent of current knowledge of population status, and management needs (Millsap *et al.* 1990, pp. 3–57). During this ranking process, the smooth-billed ani was not considered to be an imperiled taxon in Florida as indicated from its biological score, which was based upon facets of its distribution, abundance, and life history (Millsap *et al.* 1990, pp. 28–29).

Information available in Service files at the time the petition was received indicated that, in 2002, the Service's Division of Migratory Bird Management included the smooth-billed ani as a bird of conservation concern in peninsular Florida in its report, entitled "Birds of Conservation Concern 2002" (Service 2002, p. 68). The purpose of the report was to identify migratory and nonmigratory birds of the United States and its territories that are of conservation concern to encourage coordinated and proactive conservation actions among Federal, State, and private partners (Service 2002, p. 3). The overall goal of that report was to accurately identify the migratory and nonmigratory bird species (beyond those already designated as federally threatened or endangered) that represented the Service's highest conservation priorities and draw attention to species in need of conservation action (Service 2002, p. 3). The geographic scope of this endeavor comprised the United States in its entirety, including island "territories" in the Pacific and Caribbean (Service 2002, p. 1). Although the smooth-billed ani was identified as one of 78 birds of conservation concern in the Southeast, only the U.S. mainland portion of the Region was identified as of concern; Puerto Rico and the U.S. Virgin Islands were not identified as of concern (Service 2002, p. 68). In addition, the report does not include foreign countries.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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 what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding the threats to the smooth-billed ani, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

Information Provided in the Petition

The petition acknowledges that the smooth-billed ani's historic range in the United States has largely been restricted to southern Florida (Bent 1940; Terres 1980, p. 146) and that the species is considered common in many parts of its range throughout the Caribbean, including the Bahamas. The petition states that numerous records in the Dry Tortugas during the last 150 years indicate that the species is capable of traveling from Cuba to Florida (Birds of North America Online). The petition indicates that the species was reported in low numbers in Florida during the 1800s and early 1900s (Sprunt 1932; Bent 1940), with the first report of breeding in Florida in 1938 (Sprunt 1932; Terres 1980, p. 146). It also cites records from Louisiana and North Carolina dating back to the early 1800s (Bent 1940). The petition suggests that the species seems to have experienced an increase in population from the late 1950s through the early 1970s, and then a rapid decline from the 1970s to 2005. The petition claims that smooth-billed anis are extremely rare everywhere in the United States, noting data from various National Audubon Society Christmas Bird Counts.

The petition indicates that the species generally prefers "open" habitats, such as weedy and shrubby fields, pastures, farmland, and occasionally residential areas. Based upon a variety of unspecified sources, the petition states that the species is not commonly found in heavily forested or extensive marshes.

The petition states that rapid human population growth and associated development throughout peninsular Florida, much of it occurring within the species' preferred habitat and historic range, may be a potential contributor to the decline of the smooth-billed ani. The petition provides the following statement: "Apparently [the ani is] declining as southern Florida continues to develop, and the brushland shrub/scrub habitat is lost (Alsop 2002)." No additional information or citations relating to habitat loss as a threat are given in the petition.

Evaluation of Information Provided in the Petition and Available in Service Files

The smooth-billed ani appears to have declined from previous high levels in Florida (Stevenson and Anderson 1994, pp. 356–357; Mlodinow and Karlson 1999, p. 242; National Audubon Society 2005, pp. 1–3). However, it has been suggested that this species' current status in Florida may be the norm rather than an aberration (Mlodinow and Karlson 1999, p. 242). It was not until 1938 that the species was established and breeding in Florida (Sprunt 1939, pp. 335–336; Stevenson and Anderson 1994, p. 355). One hypothesis suggests that prior to the World War I era, south Florida had little suitable smooth-billed ani habitat, since it was largely a wetland surrounded by an inner zone of pine forests and outer zones of mangroves and sandy beaches (Mlodinow and Karlson 1999, p. 242). Substantial anthropogenic changes beginning in the 1920s, consisting of agricultural development and low-level residential development, may have created enough suitable habitat for dispersing anis to successfully colonize south Florida in the 1930s (Mlodinow and Karlson 1999, p. 242). Over time, residential development increased and more intensive agricultural practices and other factors may have reduced suitable habitat and dispersal habitat, causing decreased reproductive success and lower recruitment (Mlodinow and Karlson 1999, p. 242). Alsop (2002, p. 212) noted that the smooth-billed ani is apparently declining in south Florida as the area continues to develop and brushland shrub/scrub habitat is lost.

Information in our files supports the statement in the petition that human population growth and associated land-use changes are occurring in peninsular Florida, and that additional growth is expected in the future. In the 50 years prior to 1994, more than 8 million acres [(3.24 million hectares (ha)] of forest and wetland habitats (roughly 24 percent of the State) were cleared to accommodate an expanding human population (Cox *et al.* 1994, p. i). Statewide, between 1936 and 1987, cropland and rangeland increased by 4.25 million acres (1.72 million ha), or 30 percent; urban areas increased by 3.95 million acres (1.60 million ha), or 538 percent; herbaceous wetlands declined by 3.88 million acres (1.57 million ha), or 56 percent; and forests declined by 4.30 million acres (1.74 million ha), or 21 percent (Service 1999c, p. 4–128).

Although some anthropogenic habitat changes may initially favor this species, areas where the smooth-billed ani can be locally found in Florida, from the Keys north to West Palm Beach on the east coast and Collier County on the west coast (Mlodinow and Karlson 1999, p. 242), are expected to grow and become more urbanized. The human population within south Florida surpassed 1 million (337 persons per square mile (mi^2) (130 persons per square kilometer (km^2)) in 1950, 3 million (1,013 persons per mi^2 (391 persons per km^2)) in 1970, and 6 million (2,020 persons per mi^2 (780 persons per km^2)) in 1990 (Service 1999c, p. 4–127). South Florida's human population was projected to reach 8.2 million (2,771 persons per mi^2 (1,070 persons per km^2)) by 2010 (Floyd 1996 as cited in Service 1999c, p. 4–127). With continuing habitat loss and human

population growth, it is likely that habitat within the smooth-billed ani's range in south Florida will continue to be impacted.

The petition did not contain information indicating that habitat loss and modification are threats to the smooth-billed ani elsewhere in its range (i.e., outside south Florida). Throughout its range, this species uses disturbed and human-altered rural and suburban areas, open areas with brush or scrub, plantations, gardens, farmlands, forest clearings, cow pastures, and grazing lands with human habitation (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 6, p. 1; Quinn and Startek-Foote 2000, section 6, p. 1). Although the landscape throughout the smooth-billed ani's considerable range is undoubtedly changing, we do not have evidence to suggest that the species is threatened by habitat loss and modification. In fact, ongoing disturbance of forest habitats by humans may create additional suitable habitat for smooth-billed anis, suggesting the possibility that populations are increasing within the range of the species (Quinn and Startek-Foote 2000, section 11, p. 3).

Information in the petition regarding rapid human population growth and associated development in Florida is supported by information in our files. Although increased habitat loss and human population growth may have affected the smooth-billed ani in south Florida, reasons for the expansion and contraction of its range in Florida are unclear. The species uses a wide array of disturbed and human-altered habitats (Quinn and Startek-Foote 2000, section 6, p. 1). Expansion in Florida may have temporarily been facilitated by anthropogenic habitat changes that initially favored this species; however, the species' current status in Florida may be the norm (Mlodinow and Karlson 1999, p. 242).

We currently have no information, and the petition provided no information, to support a determination that this factor is a substantial risk to the species in south Florida or elsewhere in its considerable range. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to destruction, modification, or curtailment of the smooth-billed ani's habitat or range, especially given that the species uses a wide array of disturbed habitats over a considerable range.

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

The petition did not present information, nor do we have information in our files, suggesting that overutilization is threatening the smooth-billed ani.

C. Disease or Predation

The petition did not provide any information concerning disease or predation. Information available in Service files does not report evidence of diseases. For instance, Quinn and Startek-Foote (2000, section 11, p. 2), found no reports of diseases for this species. Two species of mallophaga (bird lice) have been reported in the species (Davis 1940 as cited in Quinn and Startek-Foote 2000, section 11, p. 2). However, we do not have any information that ties these ectoparasites to any specific disease affecting the smooth-billed ani. Based upon limited information in Service files, disease is not considered to be a threat for the smooth-billed ani.

Evaluation of Information Provided in the Petition and Available in Service Files

The smooth-billed ani may be vulnerable to predators, because it is an awkward, slow-flying bird (Stevenson and Anderson 1994, p. 357). However, the species also employs a sentinel system, with usually one individual positioned at an open, elevated site to warn others of predators (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 9, p. 4). In addition, Merritt (1953 as cited in Stevenson and Anderson 1994, p. 357) has postulated that a very disagreeable odor given off when the bird is alarmed "probably tends to discourage predation." Smooth-billed anis have been attacked or taken by sharp-shinned hawks (*Accipiter striatus*), fish crows (*Corvus ossifragus*), climbing rats (*Rattus rattus*), and feral cats (*Felis catus*) (Loflin 1983 as cited in Quinn and Startek-Foote 2000, section 9, p. 4; Startek 1997 as cited in Quinn and Startek-Foote 2000, section 9, p. 4; Quinn and Startek-Foote 2000, section 9, p. 4). In a limited study, Blanchard (2000, p. 45) noted a high incidence of egg and chick predation, documenting predation at 7 of 10 nests in Puerto Rico, most likely from brown rats (*Rattus norvegicus*) and feral cats. Predation rates are not available, but group vigilance likely limits diurnal predation to low levels (Davis 1940 as cited in Quinn and Startek-Foote 2000, section 11, p. 2).

In summary, disease is not known to be a threat to the species. Although information on predation within our files is limited, we do not have reason to believe that predation is a threat to the species. Accordingly, we find that the information in our files does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition did not present information, nor do we have information in our files, suggesting that inadequacy of existing regulatory mechanisms is a threat to the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition suggests that one popular explanation for the smooth-billed ani's recent decline in Florida may have been periods of cold temperatures in south Florida; however, the petition also provides information that contradicts this explanation. Smooth-billed anis using the Clewiston area near Lake Okeechobee were reported to have survived subfreezing temperatures in the 1940s (reportedly 28 °F in 1944 and 26 °F in 1947) (Dilley 1948, p. 314). The petition suggests that the apparent increase in the smooth-billed ani's numbers during the late 1950s and early 1960s (National Audubon Society Christmas Bird Count data) coincides with two cold spells, but the beginning of the species' decline in the early 1970s does not correlate with a notable period of cold weather (McGovern 2004). The petition indicates that the severest cold weather to hit south Florida was during the 1980s, when smooth-billed ani populations continued to decline, but the species' decline had begun before this time.

The petition suggests that another explanation for this species' decline in Florida may be hurricanes, but this also does not seem to be reinforced by data. The petition indicates that smooth-billed ani populations increased from 1957 to 1974, when at least five hurricanes impacted south Florida. The petition indicates that as populations began to decrease in the 1970s and 1980s, south Florida was struck by only two hurricanes (Barnes 1998).

The petition, citing Birds of North America Online, suggests that possible ingestion of pesticides resulting from this species' insect diet is another explanation for its decline.

The petition suggests, without reference, that smooth-billed anis in the United States have undergone inexplicable natural population fluctuations for centuries and that no research has been conducted to investigate this phenomenon.

Evaluation of Information Provided in the Petition and Available in Service Files

The Service has only limited information regarding the possible effects of cold temperatures on the smooth-billed ani. The information regarding cold temperatures as a factor appears to be reliable based upon limited information in Service files. The decrease in numbers of smooth-billed anis in south Florida from the late 1970s through 1986 has been suggested to be due possibly to a series of unusually cold winters, which may have affected birds directly or indirectly through the reduction of the supply of insects (Stevenson and Anderson 1994, p. 357). Mlodinow and Karlson (1999, p. 242) acknowledged that a series of cold winters during the late 1970s likely played a role (citing Robertson and Woolfenden 1992), but suggested that a continued decrease in the population does not seem to be explained by weather alone. The petition does not present information, nor does the Service have information in our files, indicating that cold temperatures are a threat to the species elsewhere in its range.

The Service has little information regarding the possible effects of hurricanes on the smooth-billed ani. The petition acknowledges that data do not seem to reinforce the explanation that hurricanes caused declines in south Florida. Also, the petition does not present information indicating that hurricanes are a threat to the species elsewhere in its range. In Jamaica, the mean number of smooth-billed anis in 10 habitats before and after Hurricane Gilbert in 1988 was not significantly different (Wunderle *et al.* 1992, pp. 164–165). Similarly, no obvious decline in smooth-billed ani abundance was observed after Hurricane Georges in Puerto Rico in 1998 (Quinn and Startek-Foote 2000, section 11, p. 2). In general, stochastic (random) events are not likely to pose a significant threat to the smooth-billed ani, due to the species' considerable population size and geographic range.

The information provided in the petition regarding pesticides as a factor appears to be reliable, based upon limited information in Service files. Stevenson and Anderson (1994, p. 357) suggested that the smooth-billed ani's diet of insects could result in the ingestion of pesticides in the agricultural areas that the species often inhabits; they list this as an adverse factor that may have contributed to the smooth-billed ani's decrease in abundance in Florida from the late 1970s through 1986. Mlodinow and Karlson (1999, p. 242) suggested that pesticides may have also reduced food sources, and that this reduction was one possible factor contributing to the decline in Florida. Neither the petition nor the Service's files present information indicating that pesticides are a threat to the smooth-billed ani elsewhere in its range.

The Service has little information on natural population fluctuations of the smooth-billed ani in Florida or elsewhere in its range. The petition suggests, without reference, that smooth-billed anis in the United States have undergone inexplicable natural population fluctuations for centuries and that no research has been conducted to investigate this phenomenon. Based upon limited information in our files, it appears that the species has received relatively little research attention. More research is needed on the species' mating system and genetic relationships, reproductive and social behaviors, habitat quality, and foraging patterns (Quinn and Startek-Foote 2000, section 15, p. 1). Blanchard (2000, pp. 1–101) studied the communal breeding system of the species in Puerto Rico. The petition did not present information indicating that such natural population fluctuations are a threat to the smooth-billed ani elsewhere in its range. We have no additional information to suggest that demographic or other factors are a threat to the smooth-billed ani in Florida or elsewhere in its range.

Information provided by the petitioner regarding cold temperatures, hurricanes, pesticides, and natural population fluctuations is generally supported by the limited information in our files. However, we have no information or data that suggest that such factors are threats to the smooth-billed ani in south Florida or elsewhere in its range. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to natural or anthropogenic factors, especially given that the species appears to have a large population over a considerable range.

Finding

In summary, the petition does not present substantial information, because it does not provide specific information on threats to the smooth-billed ani and only alludes to possible threats within Florida, which is a small portion of the species' considerable range. Information in our files indicates that the smooth-billed ani has a large population size, uses a wide array of disturbed habitats, and occupies a considerable range. While we agree with the petitioner's general statements about possible causes for the species' recent decline in Florida, information in our files suggests that the species' current status in Florida may be the norm; the species was not known to breed in Florida prior to the late 1930s. Neither the petition nor our files contain information suggesting that threats affecting the species' continued existence occur elsewhere in its range.

As for the threats identified in this petition, we found no information to suggest that they are acting on the smooth-billed ani such that the species may become extinct now or in the foreseeable future.

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing the smooth-billed ani under the Act as threatened or endangered may be warranted at this time. Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the smooth-billed ani. If you wish to provide information regarding the smooth-billed ani, you may submit your information or materials to the Field Supervisor/Listing Coordinator, South Florida Ecological Services Office (*see* **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* or upon request from the South Florida Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is Paula Halupa of the South Florida Ecological Services Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 2011.

Rowan W. Gould,

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

[FR Doc. 2011–9975 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 80
Tuesday, April 26, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

FY 2011 Emergency Food Assistance Annual Program Statement

Pursuant to the Food for Peace Act of 2008 and the Foreign Assistance Act of 1961 (FAA), notice is hereby given that the FY 2011 Emergency Food Assistance Annual Program Statement is available to interested parties for general viewing.

For individuals who wish to review, the FY 2011 Emergency Food Assistance Annual Program Statement is available via the Food for Peace Web site: *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/emergency.html* on or about April 18, 2011. Interested parties can also receive a copy of the FY 2011 Emergency Food Assistance Annual Program Statement by contacting the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–152, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 2011–9997 Filed 4–25–11; 8:45 am]

BILLING CODE P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Friday, May 13, 2011.

Time: 9 to 11 a.m.

Location: National Press Club, 529 14th Street, NW., Washington, DC 20045.

Agenda

USAID Administrator Rajiv Shah will give remarks, followed by a panel discussion. Additional information will be available on the ACVFA Web site at *http://www.usaid.gov/about_usaid/acvfa.* The tentative agenda is subject to change.

Stakeholders

The meeting is free and open to the public. Persons wishing to attend can register online at *http://www.usaid.gov/about_usaid/acvfa/acvfaregistration.html.* For additional information, please contact Nicole Mlade at (202) 712–5512 or *nmlade@usaid.gov.*

Dated: April 18, 2011.

Christine Brown,

Office of the Executive Secretariat.

[FR Doc. 2011–9998 Filed 4–25–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0014]

Notice of Revision and Request for Extension of Approval of an Information Collection; Trichinae Certification Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with the voluntary Trichinae Certification Program and to request extension of approval of the information collection to enhance the ability of U.S. pork producers to export pork and pork products to overseas markets.

DATES: We will consider all comments that we receive on or before June 27, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0014* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2011-0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0014.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the Trichinae Certification Program, contact Dr. Dave Pyburn, Staff Veterinarian, Aquaculture, Swine, Equine, and Poultry Programs, VS, APHIS, 210 Walnut Street, Room 891, Des Moines, IA 50309; (515) 284–4122. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Trichinae Certification Program.

OMB Number: 0579–0323.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock. In addition, under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622), the APHIS

Administrator has authority with respect to voluntary inspection and certification of animal products and the inspection, testing, treatment, and certification of animals.

APHIS regulations in 9 CFR part 149 contain certification requirements for the voluntary Trichinae Certification Program, a cooperative effort by APHIS and the U.S. pork industry. The program is intended to enhance the ability of swine producers, as well as slaughter facilities and other persons that handle or process swine from pork production sites that have been certified under the program, to export fresh pork and products to foreign markets.

The current collection activities for the certification program include animal disposal plans, animal movement records, feed mill quality assurance affidavits, logbooks, recordkeeping, test results, documented procedures at slaughter facilities for certified swine and edible pork products, and written procedures at approved laboratories that pertain to the performance of process-verification testing. Other activities being combined with the current collection are spot audits; notification to APHIS of program withdrawal; and requests to APHIS for temporary program withdrawal, review of audit results or other determination, and certification site audits. Although we will collect additional information, we project our burden to decrease due to the decrease in the number of annual respondents.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5280 hours per response.

Respondents: Auditors (accredited veterinarians and State animal health officials), pork producers, mill managers, slaughter facility personnel, and personnel from approved laboratories.

Estimated annual number of respondents: 1,250.

Estimated annual number of responses per respondent: 11.3512.

Estimated annual number of responses: 14,189.

Estimated total annual burden on respondents: 7,492 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of April 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–10088 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bend/Ft. Rock Ranger District; Deschutes National Forest; Deschutes County, Oregon; Mt. Bachelor Ski Area Improvements Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action comprising a number of infrastructural improvements at Mt. Bachelor ski resort, 22 miles southwest of Bend, Oregon. The resort lies entirely on National Forest System land and has operated under a ski area special use permit (SUP) issued by the Deschutes National Forest (DNF) since 1958. The permit area is 8,122 acres.

The projects include on-mountain improvements such as development of a new chairlift and associated trails, shortening and/or replacement of three existing lifts, expanding snowmaking coverage, construction of a lift-served, downhill mountain bike park, and adding to the Nordic trail system. Improvements to base area facilities are also proposed, including expansion of two existing lodges, construction of a new lodge, construction of a race training center, removal and/or relocation of inappropriately sited and outdated facilities, expansion of parking lots, and installation of associated infrastructure.

The EIS will address the Proposed Action and the required No-Action Alternative, as well as any other alternatives identified through public scoping or internal, interdisciplinary review. The EIS process will include a number of opportunities for involvement and input from the public as well as interested organizations and agencies.

Public Scoping. This notice initiates the EIS process and provides notice of the first opportunity for public involvement, the scoping period. Comments regarding the scope of the EIS (*i.e.*, the actions, alternatives, and impacts it addresses) are invited. Comments should be as specific as possible. More information on the Proposed Action and instructions for submitting scoping comments are provided below.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record for this project and will be available for public inspection.

This is also an opportunity to participate in the National Historic Preservation Act, Section 106 process.

DATES: Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the Federal Register.

ADDRESSES: Send written comments to Shane Jeffries, District Ranger, Bend-Fort Rock Ranger District, Red Oaks Square, 1230 NE Third Street Suite A–262, Bend, Oregon 97701. Comments may also be faxed to (541) 383–4700, sent electronically to *comments-pacificnorthwest-deschutes-bend-ftrock@fsled.us*, or hand delivered to 1230 NE Third Street, Suite A–262, Bend, OR, between 7:45 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Amy Tinderholt, Recreation Team Leader, Bend-Fort Rock Ranger District, Red Oaks Square, 1230 NE Third Street Suite A–262, Bend, Oregon 97701, phone (541) 383–4708.

RESPONSIBLE OFFICIAL: The responsible official is John Allen, Forest Supervisor, Deschutes National Forest, 1001 SW Emkay Dr., Bend, OR 97701. He will decide whether and under what conditions to approve the Proposed Action or an alternative addressed in the EIS.

SUPPLEMENTARY INFORMATION:

Background. Under the terms of the Ski Area Permit Act of 1986, development and operation of ski areas on National Forest System lands is guided by master development plans which describe existing conditions, identify physical, environmental, and socio-economic opportunities and constraints, establish the permittee's conceptual vision for the ski area, and outline near-to-long-term plans for achieving that vision. As a condition of SUP issuance, the Forest Service must review and accept a ski area's MDP. One component of an MDP is development of the ski area's physical infrastructure, some or all of which may lie on National Forest System land and thus require agency approval. When development plans move from the conceptual to the concrete realm, the permittee submits a proposal to the Forest Service describing specific projects, and the agency makes a determination whether to accept the proposal and initiate their decision-making process. If the proposal has the potential to significantly impact the human environment, the agency must analyze and disclose those environmental impacts, in accordance with the National Environmental Policy Act of 1969 (NEPA).

Mt. Bachelor's current MDP was accepted by the DNF in January 2011. The MDP documents analysis of current conditions at the resort and, based on that analysis, outlines anticipated development and management of the resort over the next 10 years. As the resort operates entirely on National Forest System land, all the proposed infrastructural improvement projects included in the plan require Forest Service approval prior to implementation. These projects have the potential to impact the human environment, so they constitute the Proposed Action subject to review in this EIS.

Purpose and Need. The purpose and need for action reflects the difference between existing conditions at Mt. Bachelor and desired conditions. The overarching purpose for this Proposed Action is to implement direction in the Land and Resource Plan, Deschutes National Forest (Forest LRMP); specifically the Proposed Action would assist in "Providing a wide variety of recreational opportunities within a forest environment where the localized settings may be modified to accommodate large number of visitors" (Forest LRMP p. IV–135). In order to achieve that purpose, the Proposed Action addresses the following needs.

1. To improve the skiing experience during windy conditions. Wind causes routine closure of the high-elevation lift and frequent closure of the northwest-facing chairlifts at Mt. Bachelor. These closures significantly reduce the available terrain at Mt. Bachelor on windy days, resulting in increased skier densities on the remaining pods. Development of the proposed Eastside pod addresses this need.

2. To balance the capacities and utilization of resort facilities. The existing Rainbow chairlift is underutilized by beginner and low-intermediate skiers due primarily to its lengthy ride time. It is also one of the oldest lifts on the mountain. In contrast, the adjacent Sunrise Express chairlift is over-utilized on busy days, resulting in excessive lift lines and less even distribution of skiers. A better balance in the utilization of these two chairlifts is needed to efficiently access the terrain they serve. Shortening the Rainbow lift alignment, installing the current Sunrise Express detachable quad lift in that shortened alignment, and replacing Sunrise Express with a higher-capacity detachable six-pack chairlift address this need.

The Sunrise Lodge is frequently overcrowded, even on off-peak days. A better balance between the lodge's capacity and demand for the services it provides is needed to improve the overall recreational experience available from the Sunrise base area. Proposed improvements to the Sunrise base area skier services address this need.

The Sunrise parking lot fills before the other parking lots because it is the first entrance to the resort and it is located on the more wind-protected east side of the mountain. Additional parking is needed at the Sunrise base area to maintain a balance with the lodge, lift, and trail capacity and to accommodate parking demand. The proposed parking lot expansion and access improvements address this need.

The West Village parking lot provides parking for skiers, tubers, Nordic skiers, skier-services customers, sight-seers, and employees, and it fills to capacity on busy days. Additional capacity is needed to balance with peak demand for parking space. The proposed employee and overflow parking lot at West Village address this need.

Bob's Bungalow, a warming hut on the Nordic trail network, is currently undersized and in need of repair, resulting in crowded, less than comfortable conditions at times. Additional space and refurbishing are needed to meet current demand. Proposed improvements to the warming hut address this need.

3. To segregate user groups and ability levels. Alpine races and race training take place on the busiest part of the mountain. Racers must mix with other skiers of varying ability levels, which detracts from both training effectiveness and the enjoyment of the recreational skiers. These activities need to be separated in the interest of both. This need is addressed by the proposed construction of an Alpine Training Center with dedicated training terrain accessed by a shortened Red Chair lift.

The Nordic Center does not provide beginner terrain in the vicinity of the Nordic lodge, and lower ability level skiers have to navigate a more difficult trail to access low-gradient terrain. An easily accessible learning area and a suitable trail for lower level skiers to access the trail network would increase accessibility and use of this unique Nordic skiing opportunity. The proposed learning area and two new Nordic trails address this need.

The tubing area is currently located on a low, inconsistent slope with a short run-out. A site away from the congested skier base area, with a more suitable slope gradient and run-out, would provide an improved recreational experience for skiers and tubers alike. The proposed relocation of the tubing hill and support infrastructure to the other side of the West Village parking lot addresses this need.

4. To update outdated resort facilities and infrastructure. The existing ski patrol, clinic, and administration building is undersized and outdated. Updated facilities are needed to serve these critical functions. Removal of this building and expansion of remaining structures to better support these functions, as proposed, addresses this need.

The existing generator/electrical/telephone/data building is unsightly and outdated, and it is inappropriately located within view of the West Village base and adjacent ski terrain. A more aesthetically appropriate building for these utilities in an area that is further separated from the ski terrain is needed to provide these services. Removal of this building and developing new utilities infrastructure at a less central location, as proposed, addresses this need.

Mt. Bachelor currently generates emergency power with diesel generators. Heat is provided using propane. Together, these facilities require substantial investment in and storage of fuel. A more cost-efficient, environmentally compatible power and heat generation facility would better meet these needs. The proposed biomass co-generation facility addresses

this need, as well as providing an attractive option for utilization of wood products from forest management projects and associated economic benefits.

5. To maintain adequate snow coverage in specific high-traffic areas. Early-season snow coverage is often inadequate on several key trails on the central part of the ski mountain. Improved snow coverage is needed to alleviate these deficiencies. The proposed expansion of the existing snowmaking system addresses this need.

6. To provide additional summer recreational opportunities. The resort currently has only one dedicated hiking trail and one mountain bike trail, located in the base and Nordic areas. Increased hiking and biking infrastructure is needed to meet demand, increase year-round utilization of resort resources and infrastructure, and to provide downhill mountain biking opportunities on the Forest. The proposed hiking trails, mountain bike park, interpretive areas, zipline course, and rock climbing structure address this need.

Proposed Action. The Proposed Action can be summarized as follows:

Eastside Pod:

• Developing the new Eastside Express chairlift and associated trails. The lift would be a detachable-grip, quadruple lift about 6,800 feet long with a capacity of 2,400 persons per hour (pph).

• Constructing a new catchline at a lower elevation and selective thinning above the new catchline.

Sunrise Area:

• Replacing the Rainbow lift in a shortened alignment. The alignment would be shortened by about 40 percent to 3,150 feet. The current Sunshine Express lift, a detachable quad with a capacity of 1,800 pph, would replace the existing fixed-grip lift.

• Replacing the Sunshine Express lift, a detachable quad rated at 1,800 pph, with a new detachable six-place lift with a capacity of 2,800 pph.

• Developing the Sunrise Learning Center, the venue for the resort's children's ski school program, that would include dedicated space in the remodeled Sunrise Lodge, carpet lifts on adjacent "bunny hills," and a forested kids "adventure zone."

• Improving Sunrise base area skier services, including a new 18,000 to 25,000 square foot lodge and a 115 percent expansion of the parking lot with a new access road.

• Constructing a 125,000-gallon buried water reservoir to provide adequate storage for the new lodge and associated facilities.

• Doubling the capacity of the existing Sunrise base area wastewater treatment system, particularly the drain field.

• Installing a restroom facility near the base of Skyliner Express.

West Village Area:

• Shortening the Red Chair by roughly 25 percent to 3,000 feet, and constructing the Alpine Training Center to house the resort's alpine racing program.

• Adding 25.4 acres to the resort's snowmaking coverage by expanding the existing snowmaking system onto five adjacent ski trails.

• Removing outdated West Village buildings (the ski patrol/administration building and the generator building) and expanding the West Village Lodge by about 7,000 square feet.

• Moving the tubing hill across the parking lot to the "Old Maid" area.

• Developing a new 2.5-acre employee/overflow parking lot.

• Constructing a biomass co-generation facility to provide electrical power and steam heat. It would be located near the existing maintenance building and fuel storage area.

Nordic Center:

• Making minor improvements to the Nordic Center infrastructure, including a 2-acre learning area, two new trails to access the existing trail network, and refurbishing Bob's Bungalow, including a new deck and fire pit.

Summer Activities:

• New hiking trails from Pine Marten Lodge to West Village, from the lodge to the top of Northwest Express lift, and around an interpretive loop above the lodge.

• A mountain bike park including a skills area near the base of Pine Marten Express lift and a series of beginner, intermediate, and advanced downhill trails accessed from the top of the lift.

• A canopy tour zipline course with three segments from Pine Marten Lodge down to West Village.

• A rock climbing structure at Pine Marten Lodge.

Issues. Preliminary issues include the effect of the Proposed Action on potential wilderness (the Eastside pod would be adjacent to an inventoried roadless area), special status plant and wildlife species including the northern spotted owl and several fungi, and visual quality, particularly as viewed from the Cascade Lakes Scenic Byway.

Additional Opportunities for Public Involvement. A Draft EIS will be filed with the Environmental Protection Agency (EPA) and is projected to be released for public review in March 2012. The EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register,** opening a 45-day period for comment on that document; the DNF will then publish a legal notice in the newspaper of record, The Bulletin in Bend, OR, announcing the date of the **Federal Register** notice.

The Final EIS and Record of Decision (ROD) are scheduled to be released in February 2013. The ROD will include responses to all substantive comments received on the Draft EIS. The EPA will publish a Notice of Availability (NOA) of the Final EIS in the **Federal Register**, and the DNF will publish a legal notice in the newspaper of record, opening a 45-day period for administrative appeal of the decision documented in the ROD (36 CFR part 215).

Dated: April 18, 2011.

Elizabeth J. Peer,

Acting District Ranger, Bend/Ft. Rock Ranger District, Deschutes National Forest.

[FR Doc. 2011–9869 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Allegheny Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Allegheny Resource Advisory Committee will meet in Clarendon, Pennsylvania. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to organize the committee, draft committee by-laws and begin the process of soliciting appropriate projects for nomination for funding.

DATES: The meeting will be held May 11, 2011, at 9 a.m.

ADDRESSES: The meeting will be held at the Mead Township Building located on Mead Blvd., in Clarendon, Pennsylvania. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public

inspection and copying. The public may inspect comments received at 4 Farm Colony Drive, Warren, Pennsylvania, 16365. Please call ahead to Kathy Mohney at (814) 728–6298 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kathy Mohney, RAC Coordinator, Allegheny National Forest Supervisor's Office, 4 Farm Colony Drive, Warren, Pennsylvania, 16365, phone (814) 728–6298 or e-mail *kmohney@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 Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: organize the committee, review the Secure Rural Schools Act and Title II guidelines specific to the purpose and duties of the RAC, introduce RAC members and federal officials involved with the committee management and guidelines for the operation of the RAC, schedule future meetings and begin the process of soliciting appropriate projects for nomination for funding.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 6, 2011, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 4 Farm Colony Drive, Warren, Pennsylvania, 16365, or by e-mail to *kmohney@fs.fed.us,* or via facsimile to (814) 726–1462.

Dated: April 20, 2011.

Kathryn Albaugh,

Acting Forest Supervisor.

[FR Doc. 2011–9992 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet in Weaverville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and consider a YCC project from Six Rivers National Forest that missed the submission deadline last year. The RAC committee will also be establishing a timeline for the upcoming year.

DATES: The meeting will be held Monday, May 16 at 6:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093. Written comments may be submitted as described under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Donna Harmon, Designated Federal Official, at (530) 226–2595 or *dharmon@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 Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: April 14, 2011.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2011–9999 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee (LTFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on May 12, 2011 at the Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV 89440. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held May 12, 2011, beginning at 9 a.m. and ending at 12 p.m.

ADDRESSES: Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV 89440.

For Further Information or to Request an Accommodation (One Week Prior to Meeting Date) Contact: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda: (1) Review and discuss public comments and congressional input on LTFAC's preliminary recommendation of Lake Tahoe Southern Nevada Public Land Management Act (SNPLMA) Round 12 capital projects and science themes; (2) develop a final LTFAC recommendation and hold a public hearing for the Lake Tahoe SNPLMA Round 12 capital projects and science themes, and 3) public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: April 20, 2011.

Nancy J. Gibson,

Forest Supervisor.

[FR Doc. 2011–10002 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron Manistee Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Huron Manistee Resource Advisory Committee will meet in Mio,

Michigan. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to conduct committee business and to review proposed projects.

DATES: The meeting will be held Thursday May 19, 2011 from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Mio Ranger Station, 107 McKinley Road, Mio, Michigan 48647. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mio Ranger Station. Please call ahead to (989) 826–3252 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Designated Federal Official or Carrie Scott, Natural Resource Planner, Huron-Manistee National Forests, Mio Ranger Station, 107 McKinley Road, Mio, MI 48647; (989) 826–3252.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Introductions and review of previous meeting; (2) Approve Huron Manistee RAC operating guidelines; (3) Develop and approve rating criteria for Title II projects; (4) Review of Title II project proposals; and (5) Public comment.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 18, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Huron Manistee RAC, c/o Mio Ranger Station, 107 McKinley Road, Mio Michigan 48647 or by e-mail to *cnscott@fs.fed.us* or via facsimile to (989) 826–6073.

Dated: April 20, 2011.

Steven A. Goldman,

Designated Federal Official.

[FR Doc. 2011–9994 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska 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 planning meeting of the Alaska Advisory Committee (Committee) to the Commission will be held on Tuesday, May 17, 2011 at the Loussac Library, 3600 Denali Street, Anchorage, Alaska, 99503. The meeting is scheduled to begin at 2:30 p.m. and adjourn at approximately 5 p.m. The purpose of the meeting is to plan a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by June 17, 2011. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by e-mail to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the 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 advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Western Regional Office at the above e-mail or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 19, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–10000 Filed 4–25–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–533–840, A–570–893, A–549–822, A–552–802]

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

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 26, 2011.

SUMMARY: On April 14, 2010, the U.S. Court of International Trade ("CIT") sustained the remand redetermination [1] issued by the Department of Commerce ("Department") pursuant to the CIT's remand order involving the antidumping duty investigations of certain frozen warmwater shrimp from Brazil, Ecuador, India, the People's Republic of China ("PRC"), Thailand, and the Socialist Republic of Vietnam ("Vietnam").[2] On March 30, 2011, the U.S. International Trade Commission ("ITC") notified the Department of its final determinations in the five-year (sunset) reviews concerning the antidumping duty orders on frozen warmwater shrimp from Brazil, the PRC, India, Thailand, and Vietnam, in which it found that revocation of these orders would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time to a U.S. industry. The ITC also found the domestic like product to include dusted shrimp. *See id.* at footnote 22. In light of the CIT's final decision and the ITC's sunset determination, the Department is now issuing amended antidumping duty orders that include dusted shrimp within the scope of the orders.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Matthew

[1] *See Final Results of Redetermination Pursuant to Court Remand,* Court No. 05–00192 (October 29, 2009) ("*Final Redetermination*"), found at *http://ia.ita.doc.gov/remands/09-69.pdf.*

[2] *See Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (Ct. Int'l Trade 2010) ("*Ad Hoc IV*").

Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; *telephone:* (202) 482–0219 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Ad Hoc IV arose out of the Department's final determinations [3] and amended final determinations [4] in the original investigations of certain frozen warmwater shrimp. In *Ad Hoc III,* the CIT remanded the issue of the Department's decision to exclude dusted shrimp from the scope of the antidumping duty investigations on certain frozen and canned warmwater shrimp.[5] In the *Final Redetermination* submitted in response to *Ad Hoc III,* the Department found that dusted shrimp should be included within the scope of the investigations. On April 14, 2010, the CIT affirmed all aspects of the Department's remand redetermination.

On September 2, 2010, the Department published in the **Federal Register** the amended final determinations of certain frozen warmwater shrimp from Brazil, Ecuador, India, the PRC, Thailand, and Vietnam.[6]

At the time that the Department issued its *Second Amended Final Determinations,* it did not issue amended antidumping duty orders to include dusted shrimp absent an injury analysis from the ITC. On March 30, 2011, the ITC notified the Department of its final determinations, which addressed the injury analysis with respect to dusted shrimp. *See Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011 ("*ITC Review Final*"). Specifically, the ITC noted that:

> "Dusted shrimp," which is now expressly included in the scope definition, was expressly excluded from the scope during the original investigations. In September 2010, Commerce published a notice in the **Federal Register** amending the scope definition to include "dusted shrimp" pursuant to a court remand. "Dusted shrimp" has not been the subject of any domestic like product arguments in either the original investigations or these reviews.

See ITC Review Final at 5–6. In turn, the ITC found that it did not need to make a formal redetermination of its original injury determinations and further stated that "[b]ecause the scope definition now includes dusted shrimp, and the record provides no basis for treating dusted shrimp as a distinct like product, we define the domestic like product to include dusted shrimp." *See id.* at footnote 22. As the ITC has found that the domestic like product includes dusted shrimp in its *ITC Review Final,* the Department is now issuing amended antidumping duty orders.

We also note that prior to *Ad Hoc IV,* the *Second Amended Final Determinations,* and the *ITC Review Final,* the Department revoked the antidumping duty order with respect to Ecuador.[7] Thus, we are not including Ecuador in these amended antidumping duty orders pursuant to court decision.

Inclusion in the Amended Antidumping Duty Orders

As we now find that dusted shrimp is within the scope of the orders, we have included revised scope language below. We note that the original shrimp investigations also included canned warmwater shrimp. However, given that the ITC did not find injury with respect to canned warmwater shrimp in its original investigation and that the subsequent *Shrimp AD Amended Finals and Orders* did not include canned warmwater shrimp, we are similarly not including any reference to canned warmwater shrimp in the revised scope language. While the Department finds that dusted shrimp are no longer excluded from the scope of the orders, it has retained the five-step definition of the dusting process, as dusting is a necessary precursor for producing battered shrimp, which remains outside the scope.

Scope of the Orders

The scope of the orders includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[8] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of these orders, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue

[3] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador,* 69 FR 76913 (December 23, 2004); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India,* 69 FR 76916 (December 23, 2004); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997 (December 8, 2004); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004); *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil,* 70 FR 5143 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador,* 70 FR 5156 (February 1, 2005); *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 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 5149 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005)(collectively, the "*Shrimp AD Amended Finals and Orders*").

[5] *See Ad Hoc Shrimp Trade Action Committee* v. *United States,* 637 F. Supp. 2d 1166 (Ct. Int'l Trade 2009) ("*Ad Hoc III*").

[6] *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less Than Fair Value Pursuant to Court Decision,* 75 FR 53947 (September 2, 2010) ("*Second Amended Final Determinations*").

[7] *See Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador,* 72 FR 48257 (August 23, 2007).

[8] "Tails" in this context means the tail fan, which includes the telson and the uropods.

shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of these orders. In addition, food preparations (including dusted shrimp), which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of these orders.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; [9] (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of these orders is dispositive.

[9] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

Collection of Cash Deposits

The Department will instruct U.S. Customs and Border Protection to collect cash deposits on all imports of the subject merchandise (including dusted shrimp) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This notice is issued and published in accordance with sections 735(d), 736(a), and 777(i)(1) of the Act.

Dated: April 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–10080 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Amended Final Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0219 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2011, the Department of Commerce ("Department") published the final results of the first administrative review of the antidumping duty order on certain steel nails ("steel nails") from the People's Republic of China ("PRC").[1] Also on March 23, 2011, respondent Stanley [2] filed a timely allegation that the Department made two ministerial errors in the Final Results and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors. On March 28, 2011, Petitioner [3] submitted comments rebutting one of the errors alleged by Stanley. No other party in this proceeding submitted comments on the Department's final margin calculations. Based upon our analysis of the comments and allegations of ministerial errors, we have made changes to the margin calculations for Stanley, which in turn will also affect the margin for the separate-rate companies, as it was the only individually-reviewed respondent to receive a calculated rate.[4]

Scope of the Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this proceeding are roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable

[1] *See Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379 (March 23, 2011) ("*Final Results*").

[2] The Stanley Works (Langfang) Fastening Systems Co., Ltd., the Stanley Works/Stanley Fastening Systems LP, and an unaffiliated wire drawing subcontractor are collectively referred to as "Stanley" in this administrative review.

[3] Mid Continent Nail Corporation.

[4] *See Final Results,* 76 FR at 16381–16382.

for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00. Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Amended Final Results of the Review

The Tariff Act of 1930, as amended ("Act"), defines a "ministerial error" as including "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial." *See* section 751(h) of the Act; *see also* 19 CFR 351.224(e). After analyzing Stanley's comments and Petitioner's rebuttal comments, we have determined that we made certain ministerial errors, as defined by section 751(h) of the Act, in our calculations for the *Final Results.*

First, we agree with Stanley that we made a ministerial error in the calculation of the surrogate financial ratios of Nasco Steel Pvt., Ltd. ("Nasco"), which were used in Stanley's margin calculation. Specifically, the Department inadvertently used the column for total depreciation from Schedule 4 of the financial statement, when we instead intended to use the column for depreciation during the fiscal year. Additionally, when reviewing the financial ratio calculations for Nasco to correct the above error, we also noted another inadvertent error in the calculation for the net change in inventory. Lastly, we disagree with Stanley's second ministerial error allegation, regarding whether net U.S. prices and normal value were calculated on the same weight basis. The Department's selection of denominators represents an intentional methodological choice consistent with the scope of the order and does not constitute a ministerial error within the context of section 751(h) of the Act or 19 CFR 351.224(f). For a detailed discussion of these ministerial errors, as well as the Department's analysis of these errors, *see* Memorandum to James C. Doyle, from Matthew Renkey, regarding "First Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Ministerial Error Memorandum," dated concurrently with this notice.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of certain steel nails from the PRC. Listed below are the revised weighted average dumping margins for these amended final results:

Exporter	Weighted average margin (percent)
1) Stanley	10.63
2) Aironware (Shanghai) Co., Ltd	10.63
3) Chiieh Yung Metal Ind. Corp.	10.63
4) China Staple Enterprise (Tianjin) Co., Ltd	10.63
5) Dezhou Hualude Hardware Products Co., Ltd	10.63
6) Faithful Engineering Products Co., Ltd	10.63
7) Hengshui Mingyao Hardware & Mesh Products Co., Ltd	10.63
8) Huanghua Jinhai Hardware Products Co., Ltd	10.63
9) Huanghua Xionghua Hardware Products Co., Ltd	10.63
10) Jisco Corporation	10.63
11) Koram Panagene Co., Ltd.	10.63
12) Nanjing Yuechang Hardware Co., Ltd	10.63
13) Qidong Liang Chyuan Metal Industry Co., Ltd	10.63
14) Qingdao D & L Group Ltd.	10.63
15) Romp (Tianjin) Hardware Co., Ltd	10.63
16) Shandong Dinglong Import & Export Co., Ltd	10.63
17) Shanghai Jade Shuttle Hardware Tools Co., Ltd	10.63
18) Shouguang Meiqing Nail Industry Co., Ltd	10.63
19) Tianjin Jinchi Metal Products Co., Ltd	10.63
20) Tianjin Jinghai County Hongli Industry & Business Co., Ltd	10.63
21) Tianjin Zhonglian Metals Ware Co., Ltd.	10.63
22) Wintime Import & Export Corporation Limited of Zhongshan	10.63
23) Zhejiang Gem-Chun Hardware Accessory Co., Ltd	10.63

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rates

Upon issuance of the amended final results, the Department will 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 amended final results of review, excluding any reported sales that entered during the gap period.[5] Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the period of review for which the importer-specific assessment rate is zero or *de minimis.* For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after March 23, 2011, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the amended final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have

[5] The gap period represents the period of time after the expiration of the 180-day provisional measures period during the original investigation, to the day prior to the U.S. International Trade Commission's final determination. In the instant case, the gap period is July 22, 2008, to July 24, 2008.

separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04 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 exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: April 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–10083 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–865, A–201–839]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: David Goldberger (Republic of Korea) or Henry Almond (Mexico), 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) 482–4136 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 30, 2011, the Department of Commerce ("the Department") received antidumping duty petitions concerning imports of bottom mount combination refrigerator-freezers ("bottom mount refrigerators") from the Republic of Korea ("Korea") and Mexico filed in proper form by Whirlpool Corporation ("the petitioner"), a domestic producer of bottom mount refrigerators. *See* Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico; Antidumping and Countervailing Duty Petitions (collectively, "the petitions"). On April 5 and 12, 2011, the Department issued requests for additional information and clarification of certain areas of the antidumping petitions on Korea and Mexico. Based on the Department's request, the petitioner filed supplements to the petitions on Korea and Mexico on April 11 and 14, 2011.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the petitioner alleges that imports of bottom mount refrigerators from Korea and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the investigations that it is requesting the Department to initiate (*see* "Determination of Industry Support for the Petitions" below).

Scope of Investigations

The products covered by these investigations are bottom mount refrigerators from Korea and Mexico. For a full description of the scope of the investigations, *please see* the "Scope of Investigations," in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 9, 2011, 20 calendar days from the date of signature of this notice. All comments must be filed on the records of the Korea and Mexico antidumping duty investigations as well as the Korea countervailing duty investigation. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of bottom mount refrigerators to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe bottom mount refrigerators, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty

questionnaires, we must receive comments at the above-referenced address by May 9, 2011. Additionally, rebuttal comments must be received by May 16, 2011. All comments must be filed on the records of both the Korea and Mexico antidumping duty investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that bottom mount refrigerators constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Bottom Mount Combination Refrigerator-Freezers from Korea ("Korea AD Initiation Checklist") and Antidumping Duty Investigation Initiation Checklist: Bottom Mount Combination Refrigerator-Freezers from Mexico ("Mexico AD Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petitions Covering Bottom Mount Combination Refrigerator-Freezers, on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the petitions with reference to the domestic like product as defined in the "Scope of Investigations" section above. To establish industry support, the petitioner provided its production volume of the domestic like product in 2010, and compared it to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the petitions, at 8–11, Volume 2A of the petitions, at Exhibits 4 and 5, and Supplement to the AD/CVD petitions, dated April 11, 2011 ("Supplement to the AD/CVD petitions") at 2–4 and Exhibits S–1, S–2, and S–3. The petitioner estimated 2010 production of the domestic like product by non-petitioning companies based on its knowledge of its competitors and their production capacity. We have relied upon data the petitioner provided for purposes of measuring industry support. For further discussion, *see* Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment II.

Our review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 732(c)(4)(D) of the Act, Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petitions account for at least 25 percent of the total production of the domestic like product. *See* Korea AD Initiation Checklist and Mexico AD Initiation Checklist, at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigations that it is requesting the Department initiate. *See id.*

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share,

reduced shipments, underselling and price depression or suppression, decline in financial performance, lost sales and revenue, and increase in the volume of imports and import penetration. *See* Volume I of the petitions, at 114–138, Volume 2A of the petitions, at Exhibit 6, Volume 2B of the petitions, at Exhibits 35 and 38–42, and Supplement to the AD/CVD petitions, at 5–10 and Exhibits S–1, S–2, S–4, and S–5. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Korea AD Initiation Checklist and Mexico AD Initiation Checklists, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico.

Period of Investigations

In accordance with 19 CFR 351.204(b), because these petitions were filed on March 30, 2011, the period of investigation ("POI") is January 1, 2010, through December 31, 2010, for both Korea and Mexico.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate investigations with respect to Korea and Mexico. The sources of, and adjustments to, the data relating to U.S. price and NV are discussed in greater detail in the Korea AD Initiation Checklist and the Mexico AD Initiation Checklist.

Korea

U.S. Price

The petitioner provided two U.S. prices based on average model-specific retail prices obtained from a market survey database. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in and knowledge of the market. The petitioner deducted international freight based on U.S. Customs and Border Protection ("CBP") data. It made no other adjustments to U.S. price. *See* Korea AD Initiation Checklist.

Normal Value

The petitioner provided two home market prices based on a survey of retail prices in Korea. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in and knowledge of the market. The petitioner further adjusted home market price by deducting Korean VAT and other taxes. It made no other adjustments to home market price.

In order to calculate NV, the petitioner made an adjustment for differences in costs attributable to differences in the physical characteristics of the merchandise. *See* Korea AD Initiation Checklist.

Mexico

U.S. Price

The petitioner provided two U.S. prices based on average model-specific retail prices obtained from a market survey database. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in and knowledge of the market. Because the Mexican producers sell refrigerators in the United States through affiliated resellers, the petitioner calculated constructed export price ("CEP") by deducting international freight based on CBP data and U.S. freight and selling expenses based on the petitioner's own financial statements for its U.S. operations related to bottom mount refrigerators. *See* Mexico AD Initiation Checklist.

Normal Value

The petitioner provided two home market prices based on retail prices available in Mexico. These prices were adjusted to exclude the retailer markup, as well as discounts and rebates, based on the petitioner's experience in and knowledge of the market. The petitioner calculated a net home market price by deducting inland freight and selling expenses based on the petitioner's financial statements for its operations in Mexico related to refrigerator production and sales.

In order to calculate NV, the petitioner made an adjustment for differences in costs attributable to differences in the physical characteristics of the merchandise. *See* Mexico AD Initiation Checklist.

Sales-Below-Cost Allegations

The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of bottom mount refrigerators in the Korean and Mexican markets were made at prices below the fully-absorbed cost of production ("COP"), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act ("URAA"), states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) at 833. The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. *See id.* Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.

Korea

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"); selling, general and administrative ("SG&A") expenses; financial expenses; and packing expenses. The petitioner relied on its own production experience to calculate the raw material, packing, and freight costs included in the calculation of COM. The petitioner adjusted these inputs to account for known differences in weights and technologies between the petitioner's U.S. bottom mount refrigerator models and those of the Korean producers' bottom mount refrigerator models sold in the comparison market and the United States. Inbound freight was calculated based on the petitioner's own experience adjusted for differences in weight between the bottom mount refrigerator models used to calculate COP/constructed value ("CV") and the Korean models.

The petitioner relied on its own labor costs, adjusted for known differences between the U.S. and Korean hourly compensation rates for electrical equipment, appliance, and component manufacturing in 2007, as reported by the U.S. Bureau of Labor Statistics. The petitioner relied on its own experience to determine the per-unit factory overhead costs (exclusive of labor)

associated with the production of bottom mount refrigerators.

The petitioner stated that the bottom mount refrigerator manufacturing processes in Korea are very similar to its own manufacturing processes, and therefore it is reasonable to estimate the Korean producers' usage and factory overhead rates based on the usage and factory overhead rates experienced by a U.S. bottom mount refrigerator producer. The petitioner also asserted that the use of Korean import data results in aberrationally higher weighted-average raw material and packing costs in comparison to the petitioner's own raw material and packing costs. Therefore, the reliance on the petitioner's own raw material and packing costs for purposes of calculating COP is conservative.

To value SG&A and financial expense rates, the petitioner relied on the fiscal year 2009 financial statements of two Korean producers of bottom mount refrigerators. *See* Korea AD Initiation Checklist for further discussion.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation for Korea.

Normal Value Based on Constructed Value

Because it alleged sales below cost for Korea, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner calculated NV based on CV. The petitioner calculated CV using the same average COM, SG&A, financial and packing figures used to compute the COP. The petitioner did not include in the CV calculation an amount for profit. *See* Korea AD Initiation Checklist.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of bottom mount refrigerators from Korea are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. Price to home market price, as discussed above, the estimated dumping margin is 61.82. Based on a comparison of U.S. price to CV, as discussed above, the estimated dumping margin is 34.16 percent. *See id.*

Mexico

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the COM; SG&A expenses; financial expenses; and packing expenses. The petitioner relied on its own production experience to calculate the quantity of the raw material and packing inputs, as well as the freight costs included in the calculation of COM. The petitioner adjusted the value of the raw material and packing inputs using the ratio of prices paid in Mexico by the bottom mount refrigerator producers to its own prices. The petitioner further adjusted these input values to account for known differences in weights and technologies between the petitioner's U.S. bottom mount refrigerator models used for purposes of calculating COP and CV and the Mexican bottom mount refrigerator models sold in the comparison market and the United States. Inbound freight was calculated based on the petitioner's own experience adjusted for differences in weight between the bottom mount refrigerator models used to calculate COP/CV and the Mexican models.

The petitioner relied on its own labor costs, adjusted for known differences between the U.S. and Mexican hourly compensation rates for electrical equipment, appliance, and component manufacturing in 2007, as reported by the U.S. Bureau of Labor Statistics. The petitioner relied on its own experience to determine the per-unit factory overhead costs (exclusive of labor) associated with the production of bottom mount refrigerators.

The petitioner stated that the bottom mount refrigerator manufacturing process in Mexico is very similar to its own manufacturing process, and therefore it is reasonable to estimate the Mexican producers' usage and factory overhead rates based on the usage and factory overhead rates experienced by a U.S. bottom mount refrigerator producer.

To value general and administrative (G&A) expenses, the petitioner relied on the 2010 financial statements of its Mexican subsidiary. The petitioner assumed a financial expense of zero. *See* the Mexico AD Initiation Checklist for further discussion.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation for Mexico.

Normal Value Based on Constructed Value

Because it alleged sales below cost for Mexico, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner calculated NV based on CV. The petitioner calculated CV using the same average COM, G&A, financial and packing figures used to compute the COP. The petitioner also included an amount for profit in the CV calculation, based upon the petitioner's own financial statements related to production and sales of refrigerators in Mexico. *See* Mexico AD Initiation Checklist.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of bottom mount refrigerators from Mexico are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. Price to home market price, as discussed above, the estimated dumping margin is 183.18 percent. Based on a comparison of U.S. Price to CV, as discussed above, the estimated dumping margin is 23.10 percent. *See id.*

Initiation of Antidumping Investigations

Based upon the examination of the petitions on bottom mount refrigerators from Korea and Mexico and other information reasonably available to the Department, the Department finds that these petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of bottom mount refrigerators from Korea and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930

(December 10, 2008). The Department stated that "{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *See id.,* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

Respondent Selection

Although the Department normally relies on import data from CBP to select respondents in antidumping duty investigations involving market-economy countries, the Harmonized Tariff Schedule of the United States (HTSUS) categories under which bottom mount refrigerators may be entered are basket categories which include many other types of refrigerators and freezers. Therefore, the CBP data cannot be isolated to identify imports of subject merchandise during the POI. Accordingly, the Department must rely on an alternate methodology for respondent selection, as described below.

Korea

The petition names two companies as producers and/or exporters in Korea of bottom mount refrigerators: Samsung Electronics Co., Ltd. ("Samsung") and LG Electronics, Inc. ("LG"). The petition identifies these two companies as accounting for virtually all of the imports of bottom mount refrigerators from Korea. Moreover, we know of no further exporters or producers of the subject merchandise because, as noted above, the CBP data does not provide for the isolation of such sales from the general "refrigerator-freezer" or "household refrigerator" basket HTSUS categories. Accordingly, the Department is selecting Samsung and LG as mandatory respondents in this investigation pursuant to section 777A(c)(1) of the Act. We will consider comments from interested parties on this respondent selection. Parties wishing to comment must do so within five days of the publication of this notice in the **Federal Register**.

Mexico

The CBP data is not useable for respondent selection purposes for the reason stated above. The petition names four Mexican producers/exporters of the subject merchandise. Due to limited resources, it may not be practicable to make individual weighted-average dumping margin determinations for each of them. The Department, therefore, will request quantity and value information from the exporters and producers of bottom mount refrigerators that are identified in the petition. In the event the Department decides to limit the number of mandatory respondents, the quantity and value data received from Mexican exporters and producers will be used as the basis to select the mandatory respondents.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions and amendments thereto have been provided to the representatives of the Governments of Korea and Mexico. To the extent practicable, we will attempt to provide a copy of the public version of the petitions to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of bottom mount refrigerators from Korea and Mexico materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination with respect to any country would result in the termination of the investigation with respect to that country; see section 703(a)(1) of the Act. Otherwise, these investigations will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The products covered by the investigations are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea and Mexico. For purposes of the investigations, the term "bottom mount combination refrigerator-freezers" denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;
- The upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment;[1] and
- There is at least one freezer or convertible compartment that is mounted below the upper-most interior storage compartment(s).

For purposes of the investigations, a refrigerator compartment is capable of

[1] The existence of an interior sub-compartment for ice-making in the upper-most storage compartment does not render the upper-most storage compartment a freezer compartment.

storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) Any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigations are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these investigations may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

[FR Doc. 2011–10048 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the United States International Trade Commission, in the matter of Light-Walled Rectangular Pipe and Tube from Mexico, Secretariat File No. USA–MEX–2008–1904–04.

SUMMARY: Pursuant to the Order of the Binational Panel dated March 10, 2011, affirming the final remand determination described above, the panel review was completed on April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On March 10, 2011, the Binational Panel issued an order, which affirmed the final remand determination of the United States International Trade Commission concerning Light-Walled Rectangular Pipe and Tube from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective April 21, 2011.

Dated: April 21, 2011.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–10005 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of Hebei Starbright Tire Co., Ltd. (Starbright) under the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) for the period December 17, 2007, through December 31, 2008. Following the preliminary results, we received comments from Starbright, Titan Tire Corporation (Titan), the petitioner in the original investigation, and Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively Bridgestone), a domestic interested party in the original investigation. Based on our analysis of the comments, we have determined that no changes should be made in these final results. We determine that subsidies are being provided to Starbright for the production and export of OTR Tires from the PRC. The subsidy rate is set forth in the Final Results of Review section below.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Huston or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4261 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the publication of the preliminary results of this review. *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 64268 (October 19, 2010) (*Preliminary Results*). On November 18, 2010, the Department received case briefs from Starbright and Titan. On November 23, 2010, the Department received rebuttal briefs from Starbright, Titan and Bridgestone.

Period of Review

The period of review (POR) for which we are measuring subsidies is December 17, 2007, through December 31, 2008. Since there are only 15 days of 2007 entries covered in the review, the Department preliminarily decided to calculate a single rate for subsidies received in calendar year 2008, and apply this rate to entries made from December 17, 2007, through December 31, 2007, in addition to all of 2008, for assessment purposes. *See Preliminary Results,* 75 FR at 64271. Since we did not receive any comments on this approach, we are not changing it in these final results.

Scope of the Order

The products covered by the scope of the order are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs,

ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log-skidders,[5] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9] lift trucks, straddle carriers,[10] graders,[11] mobile cranes,[12] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[13] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.,* tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the proceeding range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[14] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250";
- MH—Identifies tires for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Application of Facts Available, Including the Application of Adverse Inferences

For purposes of these final results, we continue to rely on facts available and have drawn adverse inferences, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), with regard to Starbright's receipt of countervailable domestic subsidies under the provision of rubber, carbon black, and nylon cord for less than adequate remuneration programs, and countervailable export subsidies under the value added tax and import

[1] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

[3] Agricultural sprayers are used to irrigate agricultural fields.

[4] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[5] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[9] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.,* typically around construction sites. They can also be used to perform "rough grading" in road construction.

[10] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] *i.e.,* "on-site" mobile cranes designed for off-highway use.

[13] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

[14] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.* sold with or separately from subject merchandise).

duty exemptions on imported materials program. A full discussion of our decision to apply adverse facts available is presented in the *Preliminary Results* in the section "Application of Facts Available, Including the Application of Adverse Inferences," which is unaffected by these final results. No party commented on our preliminary decision to apply facts available with adverse inferences.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Results in the Countervailing Duty Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated concurrently with this notice (Decision Memorandum). Attached to this notice as an Appendix is a list of the issues that parties have raised, and to which we have responded in the Decision Memorandum. The Decision Memorandum is on file in the Department's Central Records Unit (Room 7406 in the main Department of Commerce building). In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

After reviewing comments from all parties, we have made no adjustments to our calculations, as explained in our Decision Memorandum. Consistent with the *Preliminary Results,* and in accordance with 19 CFR 351.221(b)(5), we have calculated an individual subsidy rate for Starbright for the POR. We determine the total countervailable subsidy to be 30.87 percent *ad valorem.*

Manufacturer/Exporter	Net subsidy rate (percent)
Hebei Starbright Tire Co., Ltd.	30.87

Assessment Rates/Cash Deposits

The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review. The Department will instruct CBP to liquidate shipments of subject merchandise by Starbright entered, or withdrawn from warehouse, for consumption on or after December 17, 2007, through December 31, 2008, at the *ad valorem* rate listed above. Consistent with the requirements of section 703(d) of the Act, shipments entered, or withdrawn from warehouse, for consumption on or after April 15, 2008, and on or before September 4, 2008, the period between the expiration of "provisional measures" and the publication of the final affirmative injury determination of the U.S. International Trade Commission, will be liquidated without regard to countervailing duties. We will also instruct CBP to collect cash deposits for Starbright at the countervailing duty rate indicated above on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries from December 17, 2007, through December 31, 2008. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Comments in the Decision Memorandum

Comment 1 Application of CVD Law to the People's Republic of China, and Non-Market Economies
Comment 2 Application of CVD Law and Double Remedies
Comment 3 Application of the CVD Law and the Administrative Procedures Act
Comment 4 Starbright's Creditworthiness for 2006

[FR Doc. 2011–9969 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 18, 2010, the U.S. Department of Commerce ("the Department") published the preliminary results of the third administrative review of the antidumping duty order on certain lined paper products ("CLPP") from the People's Republic of China ("PRC"). *See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 63814 (October 18, 2010) ("*Preliminary Results*"). We invited parties to comment on the *Preliminary Results.* This review covers the following exporters and/or producer/exporters: Shanghai Lian Li Paper Products Co. Ltd. ("Lian Li"); Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. ("Hwa Fuh/Li Teng"); Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory ("Leo/Denmax"); and the Watanabe Group (consisting of Watanabe Paper Products (Shanghai) Co., Ltd. ("Watanabe Shanghai"); Watanabe Paper Products (Linqing) Co., Ltd. ("Watanabe Linqing"); and Hotrock Stationery (Shenzhen) Co., Ltd. ("Hotrock Shenzhen") (hereafter referred to as "Watanabe" or the "Watanabe Group" or "Respondent")). Based on our analysis of the information and comments we received from Watanabe and petitioner [1] after the *Preliminary Results,* we continue to apply adverse facts available ("AFA") to Watanabe. Further, we are rescinding the review with respect to Lian Li, Hwa Fuh/Li Teng, and Leo/Denmax.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or Stephanie Moore, AD/CVD Operations, Office 3,

[1] The petitioner is the Association of American School Paper Suppliers ("AASPS").

Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3797, or (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

In the *Preliminary Results* the Department found that there was credible evidence on the record that documents submitted by Watanabe at verification were either inaccurate, internally inconsistent, or were otherwise unreliable and therefore, applied an AFA rate of 258.21 percent to the PRC-wide entity, including Watanabe. Since the publication of *Preliminary Results,* the following events have occurred:

On October 22, 2010, Watanabe submitted a letter requesting clarification of how the Department plans to proceed in the final results following the Department's AFA decision with respect to Watanabe in the *Preliminary Results.* On October 28, 2010, petitioner provided comments on Watanabe's letter. On November 16, 2010, the Department issued a letter to Watanabe requesting further information in order to more fully evaluate the issues addressed in the *Preliminary Results.* Watanabe submitted its response on December 8, 2010.

On December 22, 2010, the Department informed interested parties of the due dates for filing case and rebuttal briefs.[2] On January 6, 2011, Watanabe and petitioner filed their case briefs. On January 13, 2011, Watanabe and petitioner submitted their rebuttal briefs.

In its January 13, 2011, rebuttal brief, Watanabe alleged that AASPS's January 6, 2011, case brief included business proprietary information ("BPI") for which AASPS failed to properly identify the person that originally submitted the BPI data, as required by 19 CFR 351.306(c). On January 21, 2011, in agreement with Watanabe's allegation, the Department rejected and removed from the record, AASPS's case brief dated January 6, 2011. The Department also granted a five-day extension to allow petitioner to revise and resubmit its case brief. On January 26, 2011, petitioner submitted its revised case brief. Watanabe resubmitted its rebuttal brief on February 2, 2011.

[2] *See* Memorandum to the File, through James Terpstra, Program Manager, AD/CVD Operations, Office 3, from Cindy Robinson, Case Analyst, titled "Certain Lined Paper Products from the People's Republic of China," dated December 22, 2010.

On February 4, 2011, the Department extended the time limits for the final results of this review until no later than April 18, 2011. *See Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from the People's Republic of China,* 76 FR 6397 (February 4, 2011).

Scope of the Antidumping Duty Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper", and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches.

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found

to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Partial Rescission

In the *Preliminary Results,* the Department preliminary rescinded this review with respect to HwaFu/Li Teng because the Department was unable to directly serve its original questionnaire to HwaFu/Li Teng.[3] Consistent with the Department's decision in *Silicon Metal from PRC,*[4] the Department is rescinding the review with respect to Hwa Fu/Li Teng. *See also Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65083 (November 7, 2006).

In addition, in the *Preliminary Results,* the Department applied the reseller policy with respect to the following two respondents: Lian Li and Leo/Denmax.[5] Lian Li and Leo/Denmax reported that they had no shipments of subject merchandise to the United States during the period of review ("POR"). As we stated in the *Preliminary Results,* our examination of shipment data from U.S. Customs and Border Protection ("CBP") for these two companies confirmed that there were no entries of subject merchandise from them during the POR. Further, we also sent an inquiry to CBP to confirm the claims made by Lian Li and Leo/Denmax.[6] In the *Preliminary Results,* we determined not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Lian Li and Leo/Denmax and issue appropriate instructions to CBP based on the final results of the review.[7]

See id. However, in practice, the Department to date has not applied the

[3] *See* Memorandum to the File from Cindy Robinson, Senior International Trade Analyst, AD/CVD Operations, Office 3, regarding "*Antidumping Duty Administrative Review of Certain Lined Paper Products from the People's Republic of China: Proof of Non-Delivery to Hwa Fu/Li Teng,*" dated October 7, 2010.

[4] *See, e.g., Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 12378 (March 7, 2008) (*Silicon Metal from PRC*), unchanged in *Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Silicon Metal From the People's Republic of China,* 73 FR 46587 (August 11, 2008).

[5] We applied the reseller policy stated in our May 6, 2003, "automatic assessment" clarification. We explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) ("May 2003 automatic assessment clarification").

[6] *See Preliminary Results* and CBP Message No. 0028302, dated January 28, 2010.

[7] In addition, we stated that because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Lian Li and Leo/Denmax and exported by other parties at the PRC-wide entity rate should we continue to find at the time of our final results that Lian Li and Leo/Denmax had no shipments of subject merchandise from the PRC. In support of our decision, we cited our practice in *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008).

reseller policy in non-market economy ("NME") cases.

The Department's practice concerning "no-shipment" respondents in NME cases has been to rescind the administrative review if the respondent certifies that it had no shipments and the Department has confirmed through its examination of data from CBP that there were no shipments of subject merchandise during the POR. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review,* 76 FR 8338 (February 14, 2011). *See also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

In this case, as stated above, both Lian Li and Leo/Denmax certified that they had no shipments and the Department has confirmed through its examination of data from CBP that there were no shipments of subject merchandise during the POR by Lian Li and/or Leo/Denmax. Therefore, consistent with the Department's current practice in NME cases, we are rescinding this administrative review with respect to Lian Li and Leo/Denmax.

Application of Adverse Facts Available

Section 776(a) of the Act provides that, the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted

by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); *Statement of Administrative Action,* reprinted in H.R. Doc. No. 103–216, at 870 (1994) ("*SAA*"). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("*Nippon Steel*").

In *Nippon Steel,* the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations." Next the Department must "make a subjective showing that the respondent * * * has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of cooperation in either: (a) Failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." The Court clarifies further that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." *See Nippon Steel,* at 1382–83.

Watanabe

As discussed in the *Preliminary Results,* the Department determined that facts available with an adverse inference was warranted for Watanabe because there was credible evidence on the record that certain documents submitted by Watanabe at verification were either inaccurate, internally inconsistent, and/or were otherwise unreliable. Further, Watanabe was unable to explain the discrepancies between documents collected by the Department at verification and documents provided by petitioner that implicated the veracity of Watanabe's questionnaire response.

Subsequent to the *Preliminary Results,* the Department requested that Watanabe provide an explanation for the numerous discrepancies identified as a result of information provided by petitioner prior to the *Preliminary Results.* As discussed more fully in the Issue and Decision Memorandum accompanying this notice, among other things, Watanbe attempted to explain away the discrepancies by claiming any discrepancy was merely caused by the fact that, for each sale, there are actually two separate entries—revenue and payment. Because of the nature of the issue, see Memorandum to the File, through James Terpstra, Program Manager, AD/CVD Operations, Office 3, Import Administration, from Cindy Robinson, Financial Analyst, titled "Certain Lined Paper Products from People's Republic of China: Certain Business Proprietary Information ("BPI") in the Issues and Decision Memorandum with Respect to the Watanabe Group," dated concurrently with this notice ("Watanabe BPI Memo") for a complete discussion.

We continue to find that the factual record in this review supports the conclusion that Watanabe's official books and records do not accurately reflect its actual commercial practice. The existence of two sets of invoices (one for revenue and one for payment) undermines the credibility of the Department's verification as well as the reliability of Watanabe's books and records and questionnaire response. Watanabe owns and generates its own accounting records and was aware that its sales reconciliation was based on records that did not accurately reflect the amounts charged to or received from its customers, yet it chose to not

voluntarily explain this to the Department. Because Watanabe did not disclose this information to the Department prior to or at verification, the Department was prevented from conducting verification based on accurate documentation. Rather, the Department conducted verification on the basis of documents that did not reflect the true selling prices and total sales values charged and payments received with respect to third country sales, which renders the "Completeness Test" and "Quantity and Value Reconciliation" futile. Consequently, the accuracy and completeness of Watanabe's sales and factors of production records, and its accounting system is called into question.

Furthermore, as noted above, Watanabe had participated in the original investigation and the second administrative review and received an AFA rate in the second review. Accordingly, it should have known that it is responsible for demonstrating the reliability of its own data.

Because Watanabe withheld information, significantly impeded the proceeding and provided information that could not be verified, we find that application of facts available is appropriate under sections 776(a)(2)(A), (B), and (C) of the Act. We further find that application of AFA is appropriate under section 776(b) because Watanabe failed to cooperate to the best of its ability in responding to the Department's requests for information.

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within that country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter demonstrates that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). It is the Department's practice to require a party to submit evidence that it operates independently of the State-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), and *Peer Bearing Co. Changshan* v. *United States, 587 F.Supp. 2d 1319, 1324–25 (CIT 2008)* (affirming the Department's determination in that review). As discussed in the *Preliminary Results,* and the Issues and Decision Memorandum accompanying this notice, in light of the credible evidence placed on the record by petitioner and the lack of an adequate explanation for the discrepancies by Watanabe, we continue to conclude that the information in Watanabe's questionnaire response is not reliable for purposes of this review. Therefore, Watanabe has not demonstrated that it operates free from government control. As a result, the Department continues to find that Watanabe is part of the PRC-wide entity.

The PRC-Wide Entity

Because we determined that Watanabe is part of the PRC-wide entity, the PRC-wide entity is under review. Pursuant to section 776(a) of the Act, we further find that because the PRC entity (including Watanabe) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that cannot be verified, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Moreover, by failing to respond to the Department's requests for information, withholding or failing to provide information in a timely manner or in the form or manner requested by the Department, submitting information that cannot be verified, or otherwise impeding the proceeding, we find that the PRC-wide entity has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information in this proceeding, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available. *See Nippon Steel,* 337 F.3d at 1382–83.

Selection of Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009).

Generally, the Department finds that selecting the highest rate from any segment of the proceeding as AFA is appropriate. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005). The CIT and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding the application of an AFA rate which was the highest available dumping margin from a different respondent in an investigation).

As AFA, we have assigned to the PRC-wide entity, including Watanabe, a rate of 258.21 percent, from the investigation of CLPP from the PRC, which is the highest rate on the record of all segments of this proceeding. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006). As explained below, this rate has been corroborated.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination), *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 62 FR 11825 (March 13, 1997). Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627 (June 16, 2003) (unchanged in final determination), *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

The AFA rate selected here is from the investigation and was applied to Watanabe in the second administrative review. This rate was calculated based on information contained in the petition, which was corroborated for the final determination. *See Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 74 FR 17160 (April 14, 2009). No additional information has been presented in the current review which calls into question the reliability of the information. Therefore, the Department finds that the information continues to be reliable. In addition, the AFA rate we are applying is the rate currently in effect for the PRC-wide entity.

Furthermore, in this case, the PRC-wide rate which was applied to Watanabe was corroborated and upheld by the CIT in its recent decision *Watanabe* v. *United States* (Slip Op. 10–139 Court No. 09–00520) (CIT December 22, 2010), where the CIT found that the Department need not corroborate the PRC wide rate with regards to that specific respondent. Specifically, the CIT states: "{w}here Commerce has found the respondent part of the PRC-wide entity based on adverse inferences, Commerce need not corroborate the PRC-wide rate with respect to information specific to that respondent because there is "no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company." *See also Peer Bearing Co.-Changshan* v. *United States,* 587 F. Supp. 2d 1319, 1327 (CIT 2008); *Shandong Mach. Imp. & Exp. Co.* v. *United States,* Slip Op. 09–64, 2009 WL 2017042, (CIT June 24, 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate). Commerce's permissible determination that Watanabe is part of the PRC-wide entity means that inquiring into Watanabe's separate sales behavior ceases to be meaningful.

Changes since the Preliminary Results

We have made no changes from the *Preliminary Results* in the final results.

Final Results of Review

The Department has determined that the following dumping margin exists for the period September 1, 2008, through August 31, 2009:

Producer/Manufacturer	Weighted-Average Margin
PRC-Wide Rate (which includes the Watanabe Group).	258.21%

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and 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 these final results of review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously reviewed or investigated PRC exporters who received a separate rate in a prior segment of the proceeding, but were not reviewed in this review, the cash deposit rate will continue to be the rate assigned in that segment of the proceeding; (2) for all other PRC exporters of subject merchandise that have not been found to be entitled to a separate rate the cash deposit rate will be the PRC-wide rate of 258.21 percent; and (3) for all non-PRC exporters of subject merchandise 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.

Notification to Interested Parties

This notice serves as the final 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 in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the

return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Accompanying Issues and Decision Memorandum

Comment 1: Alleged Procedural Irregularities
Comment 2: Timeliness of Petitioner's New Factual Information Submission
Comment 3: Application of Adverse Inferences to Petitioner
Comment 4: Watanabe's Inability to Respond Based on Bracketing of Information
Comment 5: Petitioner's Case Brief Was Properly Rejected but Should Not Have Been Allowed To Be Resubmitted
Comment 6: Application of Adverse Inferences With Respect to Watanabe
Comment 7: Factors of Production and Surrogate Values

[FR Doc. 2011–10073 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–973]

Certain Steel Wheels From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Bobby Wong, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5848 and (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 30, 2011, the Department of Commerce ("Department") received an antidumping duty ("AD") petition concerning imports of certain steel wheels ("steel wheels") from the People's Republic of China ("PRC") filed in proper form by Accuride Corporation ("Accuride") and Hayes Lemmerz International, Inc. (collectively, "Petitioners").[1] On April 6, 2011, the Department issued supplemental questions to Petitioners regarding certain issues in the Petition.[2] Petitioners responded to the questions with supplemental responses on April 11, 2011.[3] On April 12, 2011, the Department requested additional information on certain issues.[4] On April 14, 2011, Petitioners provided a response to the Department's requests.[5] On April 14, 2011, the Department requested further clarification with respect to the Petition, which Petitioners submitted on April 15, 2011.[6] On April 18, 2011, the Department further clarified the scope of the Petition with Petitioners.[7]

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege that imports of steel wheels from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation that they are requesting the Department to initiate (see "Determination of Industry Support for the Petition" below). The Department also notes that, pursuant to section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

Scope of the Investigation

The products covered by this investigation are steel wheels from the PRC. For a full description of the scope of the investigation, *see* "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, May 9, 2011, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of steel wheels to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under investigation in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences

[1] *See* the Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended ("Petition"), filed on March 30, 2011.

[2] *See* April 6, 2011, Petition for the Imposition of Antidumping Duties on Steel Wheels from the People's Republic of China: Supplemental Questions.

[3] *See* Supplement to the AD/CVD Petitions dated April 11, 2011 ("First Supplement to the AD/CVD Petitions"). *See also* April 11, 2011, Petition for the Imposition of Antidumping Duties on Steel Wheels from the People's Republic of China: PRC AD Supplemental Questionnaire Response ("PRC AD Supplement to the Petitions").

[4] *See* April 12, 2011, Memorandum to the File, regarding "Phone Conference with and Request for Further Information from Petitioners."

[5] *See* Supplement to the AD/CVD Petitions dated April 14, 2011 ("Second Supplement to the AD/CVD Petitions").

[6] *See* Supplement to the AD/CVD Petitions dated April 15, 2011 ("Third Supplement to the AD/CVD Petitions").

[7] *See* April 18, 2011, Memorandum to the File RE: Petitions for the Imposition of Antidumping ("AD") and Countervailing Duties ("CVD") on Steel Wheels from the People's Republic of China ("PRC"), Clarification of Scope Language, on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building.

among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel wheels, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by May 9, 2011. Additionally, rebuttal comments, limited to issues raised in the comments, must be received by May 16, 2011.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[8] Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that steel wheels constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[9]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigations" section in Appendix I of this Notice. To establish industry support, Petitioners provided their production of the domestic like product in 2010.[10] Petitioners compared their production to the estimated total production of the domestic like product for the entire domestic industry.[11] To support their estimation of industry support, Petitioners provided an affidavit from an employee of Accuride, who has 40 years professional experience in the steel wheels industry.[12] We have relied upon data Petitioners provided for purposes of measuring industry support.[13]

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, we find that the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[14] Second, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[15] Finally, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are an interested party as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.[16]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioners provide data that demonstrate that subject imports exceed the negligibility

[8] *See USEC, Inc.* v. *United States,* 25 C.I.T. 49, 56(2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989)).

[9] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Steel Wheels from the People's Republic of China ("Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petitions Covering Steel Wheels from the People's Republic of China, on file in the CRU.

[10] *See* Volume I of the Petition, at I–3.

[11] *See id.*

[12] *See* Second Supplement to the AD/CVD Petitions, at 1, and Exhibit 1.

[13] For further discussion, see Initiation Checklist at Attachment II.

[14] *See* Section 732(c)(4)(D) of the Act, and Initiation Checklist at Attachment II.

[15] *See* Initiation Checklist at Attachment II.

[16] For further discussion, please *see* Initiation Checklist at Attachment II.

threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales and revenues, reduced production, reduced capacity utilization rate, decreased shipments, underselling, reduced employment, reduced hours worked, reduced wages paid, decline in financial performance, and an increase in import penetration.[17] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[18]

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), because this Petition was filed on March 30, 2011, the period of investigation ("POI") is July 1, 2010, through December 31, 2010.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate this investigation with respect to imports of steel wheels from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are further discussed in the Initiation Checklist at Attachment V. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

U.S. Price

Petitioners calculated export prices ("EPs") for steel wheels based on two sources: (1) Price quotes from a Chinese company,[19] adjusted for certain movement expenses,[20] and (2) average unit values ("AUVs") for the POI of imports of steel wheels from the PRC.

To value brokerage and handing, Petitioners used data published in *Doing Business 2010: India,* published by the World Bank. However, Petitioners included foreign domestic freight costs in its calculation of surrogate brokerage and handling, which the Department excludes from the calculation, and therefore, for this initiation, we have excluded the line item from the calculation. Additionally, because the World Bank publication provided by Petitioners reported data from 2009, the Department inflated the value to be contemporaneous with the proposed POI.[21]

To value inland freight, Petitioners obtained information from www.infobanc.com. However, for the initiation, the Department revised Petitioners' calculation of the surrogate inland freight expense to reflect the Department's current domestic inland freight methodology.[22]

Normal Value

Petitioners state that, in every previous administrative review and less-than-fair-value investigation involving merchandise from the PRC, the Department has concluded that the PRC is a non-market economy country ("NME") and, as the Department has not revoked this determination, its NME status remains in effect.[23] In accordance with section 771(18)(c)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for the purposes of initiating this investigation.[24]

Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country or countries, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners claim that India is the appropriate surrogate market economy country because it is at a comparable level of economic development to the PRC and it is a significant producer of comparable merchandise.[25] Petitioners state that the Department has determined in previous investigations and administrative reviews that India is at a level of development comparable to the PRC.[26]

Based on the information provided by Petitioners, the Department believes that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on the product-specific consumption rates of Accuride. Petitioners note that they used Accuride's data because the consumption rates for the factors of production used by PRC producers are not known, or reasonably available, to Petitioners.[27] Petitioners also believe that PRC steel wheel producers use hot-rolled steel coil and a similar process in manufacturing steel wheels as Accuride.[28]

Petitioners valued the factors of production using reasonably available public surrogate country data, including India import data from the Monthly Statistics of the Foreign Trade of India from the period February 2010 through July 2010, the most current data available. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries. Petitioners also excluded import statistics from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and import statistics for non-specified countries.[29]

[17] *See* Volume I of the Petition, at I–6–12, and Exhibits I–4—I–9.

[18] For further discussion, please *see* Initiation Checklist at Attachment III.

[19] *See* Initiation Checklist and Petition Volume II at Exhibit II–2–A.

[20] *See* Petition Volume II at Exhibit II–1–A, and First Supplement to the AD/CVD Petitions, at Exhibit 5.

[21] *See* Initiation Checklist at Attachment V.

[22] *See* Initiation Checklist at Attachment V; *see, e.g., Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 11.

[23] *See* Petition Volume II, at II–1 and II–2.

[24] *See generally* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.* Additionally, in recent investigations, the Department has continued to determine that the PRC is an NME country. *See, e.g., Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances,* 76 FR 1966 (January 11, 2011) ("*Drill Pipe from the PRC*"); and *Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524 (April 4, 2011).

[25] *See* Petition Volume II, at II–1 to II–2.

[26] *See id.*

[27] *See id.* at II–3 and Exhibit II–3–C.

[28] *See id.* at II–3 and 4.

[29] *See* Petition Volume II, at II–5 and Exhibit II–3–D-l through Exhibit II–3–D–6. *See also* PRC AD Supplement to the Petition at 7 and Exhibit 6.

Petitioners valued hot-rolled steel coils using HTS category 7208.36.10 because the description of the HTS offers greater specificity with respect to the thickness of the steel. Similarly, Petitioners valued: (1) Hot-rolled steel coil using HTS category 7211.14.40; (2) steel scrap using HTS 7204.10; and (3) weld wire using HTS category 8311.20.[30]

Petitioners explained that because they were unable to obtain a suitable surrogate value for paint, Petitioners have excluded the input from the calculation of NV.[31]

Petitioners valued electricity using the 2008 Central Electric Authority of India, for small, medium, and large industries. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, Petitioners did not adjust the average value for inflation.[32] For natural gas, Petitioners used data provided by the Natural Gas Authority of India.[33] For water, Petitioners used the average water rates for the Maharashtra Province derived from the Maharashtra Industrial Development Corporation's industrial water tariffs as of June 8, 2009.[34]

Petitioners submitted the wage rate calculation from *Drill Pipe from the PRC,* which relies on the Department's current methodology to value labor.[35] For the purposes of initiation, to value labor the Department relied on the value for the wage rate calculated in *Drill Pipe from the PRC.*

Petitioners provided wholesale price index ("WPI") as published by the Office of Economic Adviser to the Government of India,[36] and explained that they were unable to obtain the WPI to cover the entire proposed POI. Therefore, for the initiation, the Department has adjusted Petitioners' calculations and applied that Department's normal inflation methodology using WPI for the entirety of the proposed POI from the International Monetary Fund, International Financial Statistics database,[37] where appropriate.[38]

To calculate factory overhead, selling, general and administrative expenses, and profit for integrated producers, Petitioners relied on the financial statements of Wheels India Limited and Steel Strip Wheels Limited, Indian producers of comparable merchandise.[39]

Fair Value Comparisons

Based on the data provided by Petitioners, we find that there is reason to believe that imports of steel wheels from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on the comparison of EP and U.S. import AUVs to NV, as noted above, the estimated dumping margins for the PRC range from 30.25 percent to 193.54 percent.

Initiation of Antidumping Investigation

Based upon the examination of the Petition concerning steel wheels from the PRC and other information reasonably available to the Department, the Department finds that this Petition meets the requirements of section 732 of the Act. Therefore, pursuant to section 732(c)(1)(A) of the Act, we are initiating an AD investigation to determine whether imports of steel wheels from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5).[40] The Department stated that "withdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area."[41]

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department will request quantity and value information from known exporters and producers identified with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.[42] On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html,* and a response to the quantity and value questionnaire is due no later than May 10, 2011. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in Volume I of the Petition, at Exhibit I–2.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

Separate Rates Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.[43] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register.** The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a

[30] *See* Petition Volume II, at II–3 through II–9; and Exhibit II–3–D–1 to Exhibit II–3–D–6.

[31] *See* PRC AD Supplement to the Petitions at 2.

[32] *See* Second Supplement to the AD/CVD Petitions at 1 and Exhibit 2.

[33] *See* Petition Volume II, at II–10 and Exhibit II–3–E–2.

[34] *See* Petition Volume II, at Exhibit II–3–E–3.

[35] *See* Third Supplement to the AD/CVD Petitions, at Exhibit 2.

[36] *See* Petition Volume II, at Exhibit II–3–F.

[37] *See, e.g., Drill Pipe from the PRC* and accompanying Issues and Decision Memorandum at Comment 3.

[38] *See* Initiation Checklist at Attachment V.

[39] *See* Petition Volume II, at Exhibit II–3–I.

[40] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008).

[41] *Id.* at 74931.

[42] *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[43] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 ("Policy Bulletin"), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05-1.pdf.*

separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

{W}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than May 16, 2011, whether there is a reasonable indication that imports of steel wheels from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[44] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011.[45] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTSUS"): 8708.70.05.00, 8708.70.25.00, 8708.70.45.30, and 8708.70.60.30. These HTSUS numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[FR Doc. 2011–10076 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

[44] *See* section 782(b) of the Act.

[45] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) ("*Interim Final Rule*") amending 19 CFR 351.303(g)(1) and (2).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–866]

Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0486 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 30, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea) filed in proper form by Whirlpool Corporation (the petitioner), a domestic producer of bottom mount refrigerators. *See* "Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Antidumping and Countervailing Duty Petitions on Behalf of Whirlpool Corporation," dated March 30, 2011 (Korea CVD Petition). On April 5, 6, 12, and 14, 2011, the Department issued additional requests for information and clarification of certain

areas of the Korea CVD Petition. Based on the Department's requests, the petitioner timely filed additional information pertaining to the Korea CVD Petition on April 11, 14, and 18, 2011.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended, (the Act), the petitioner alleges that producers/exporters of bottom mount refrigerators from Korea received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner has filed this CVD petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and the petitioner has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (*see* "Determination of Industry Support for the CVD Petition," below).

Period of Investigation

The period of investigation (POI) is calendar year 2010, *i.e.,* January 1, 2010, through December 31, 2010. *See* 19 CFR 351.204(b)(2).

Scope of Investigation

The products covered by this investigation are bottom mount refrigerators from Korea. For a full description of the scope of this investigation, please see the "Scope of Investigation" Appendix to this notice.

Comments on Scope of Investigation

During our review of the Korea CVD Petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by May 9, 2011, twenty calendar days from the signature date of this notice. All comments must be filed on the records of the Korea and Mexico antidumping duty investigations as well as the Korea countervailing duty investigation. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations in Washington, DC with the Government of Korea (GOK) with respect to the Korea CVD Petition on April 13, 2011. *See* Memorandum to the File, "Consultations With the Government of Korea Regarding the Countervailing Duty Petition on Bottom Mount Combination Refrigerator-Freezers From Korea," dated April 14, 2011, a public document on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that bottom mount refrigerators constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Bottom Mount Combination Refrigerator-Freezers from Korea (Korea CVD Initiation Checklist) at Attachment II, "Analysis of Industry Support for the Petitions Covering Bottom Mount Combination Refrigerator-Freezers," on file in the CRU.

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, the petitioner provided its production volume of the domestic like product in 2010, and compared it to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Korea CVD Petition, at 8–11, Volume 2A of the petition, at Exhibits 4 and 5, and Supplement to the AD/CVD petitions, dated April 11, 2011 at 2–4 and Exhibits S–1, S–2, and S–3. The petitioner estimated 2010 production of the domestic like product by non-

petitioning companies based on its knowledge of its competitors and their production capacity. We have relied upon data the petitioner provided for purposes of measuring industry support. For further discussion, *see* Korea CVD Initiation Checklist, at Attachment II.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that the petitioner has established industry support. First, the petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 702(c)(4)(D) of the Act and Korea CVD Initiation Checklist, at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. *See* Korea CVD Initiation Checklist, at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See id.*

Injury Test

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threatening to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, underselling and price depression or suppression, decline in financial performance, lost sales and revenue, and increase in the volume of imports and import penetration. *See* Volume I of the Korea CVD Petition, at 114–138, Volume 2A of the petition, at Exhibit 6, Volume 2B of the petition, at Exhibits 35 and 38–42, and Supplement to the AD/CVD petitions, at 5–10 and Exhibits S–1, S–2, S–4, and S–5. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Korea CVD Initiation Checklist at Attachment III, "Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea and Mexico."

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

The Department has examined the countervailing duty petition on bottom mount refrigerators from Korea and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether Korean producers/exporters of bottom mount refrigerators receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Korea CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the Korea CVD Petition to provide countervailable subsidies to producers/exporters of the subject merchandise:

1. Korean Export-Import Bank (KEXIM) Subsidy Programs
   a. KEXIM Short-Term Export Credit
   b. KEXIM Export Factoring
   c. KEXIM Export Loan Guarantees
   d. KEXIM Trade Bill Rediscounting Program
2. Korea Development Bank (KDB) and Industrial Bank of Korea (IBK) Short-Term Discounted Loans for Export Receivables
3. Korea Trade Insurance Corporation—Export Insurance and Export Credit Guarantees
   a. Short-Term Export Insurance
   b. Export Credit Guarantees
4. Production Facilities Subsidies: Gwangju Metropolitan City Programs
   a. Tax Reductions/Tax Exemptions
   b. Relocation Grants
   c. Facilities Grants
   d. Employment Grants
   e. Training Grants
   f. Consulting Grants
   g. Preferential Financing for Business Restructuring
   h. Interest Grants for the Stabilization of Management Costs
   i. "Special Support" for Large Corporate Investors
   j. Research and Development and Other Technical Support Services
5. Production Facilities Subsidies: Changwon City Subsidy Programs
   a. Relocation Grants
   b. Employment Grants
   c. Training Grants
   d. Facilities Grants
   e. Grant for "Moving Metropolitan Area-Base Company to Changwon"
   f. Preferential Financing for Land Purchase
   g. Tax Reductions and Exemptions
   h. Financing for the Stabilization of Business Activities
   i. Special Support for Large Companies
6. Gyeongsangnam-do Province and Korea Energy Management Corporation Energy Savings Subsidies
7. Government of Korea Facilities Investment Support: Article 26 of the Restriction of Special Taxation Act (RSTA)
8. Government of Korea Targeted Subsidies
   a. Research, Supply, or Workforce Development Investment Tax Deductions for "New Growth Engines" Under RSTA Art. 10(1)(1)
   b. Research, Supply, or Workforce Development Expense Tax

Deductions for "Core Technologies" Under RSTA Art. 10(1)(2)
c. RSTA Art. 25(2) Tax Deductions for Investments in Energy Economizing Facilities
d. Targeted Facilities Subsidies through Korea Finance Corporation (KoFC), KDB, and IBK "New Growth Engines Industry Fund"
e. Government of Korea Green Fund Subsidies

For a description of each of these programs and a full discussion of the Department's decision to initiate an investigation of these programs, see Korea CVD Initiation Checklist.

We are not including in our investigation the following program alleged to benefit producers/exporters of the subject merchandise in Korea:

1. Changwon City Provision of Waste Heat Electricity

For further information explaining why the Department is not initiating an investigation of this program, *see CVD Initiation Checklist.*

Respondent Selection

Although the Department normally relies on import data from CBP to select respondents in countervailing duty investigations, the Harmonized Tariff Schedule of the United States (HTSUS) categories under which bottom mount refrigerators may be entered are basket categories which include many other types of refrigerators and freezers. Therefore, the CBP data cannot be isolated to identify imports of subject merchandise during the POI. Accordingly, the Department must rely on an alternate methodology for respondent selection.

The petition names two companies as producers and/or exporters in Korea of bottom mount refrigerators: Samsung Electronics Co., Ltd. (Samsung) and LG Electronics, Inc. (LG). The petition identifies these two companies as accounting for virtually all of the imports of bottom mount refrigerators from Korea. Moreover, we know of no further exporters or producers of the subject merchandise because, as noted above, the CBP data does not provide for the isolation of such sales from the general "refrigerator-freezer" or "household refrigerator" basket HTSUS categories. Accordingly, the Department is selecting Samsung and LG as mandatory respondents in this investigation pursuant to section 777A(e)(1) of the Act. We will consider comments from interested parties on this respondent selection. Parties wishing to comment must do so within five days of the publication of this notice in the **Federal Register**.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public versions of the Korea CVD Petition and amendments thereto have been provided to the GOK. To the extent practicable, we will attempt to provide a copy of the public version of the Korea CVD Petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the petition was filed, whether there is a reasonable indication that imports of allegedly subsidized bottom mount refrigerators from Korea materially injure, or threaten material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491* (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

Scope of the Investigation

The products covered by the investigation are all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea.

For purposes of the investigation, the term "bottom mount combination refrigerator-freezers" denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

- The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;
- The upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment; [1] and
- There is at least one freezer or convertible compartment that is mounted below the upper-most interior storage compartment(s).

For purposes of the investigation, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) Any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to the investigation are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030,

[1] The existence of an interior sub-compartment for ice-making in the upper-most storage compartment does not render the upper-most storage compartment a freezer compartment.

and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to the investigation may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

[FR Doc. 2011–10050 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–974]

Certain Steel Wheels From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4793 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 30, 2011, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of certain steel wheels (steel wheels) from the People's Republic of China (the PRC) filed in proper form by Accuride Corporation (Accuride) and Hayes Lemmerz International, Inc. (collectively, Petitioners).[1]

On April 6, 2011, the Department issued supplemental questions to Petitioners regarding certain issues in the Petition.[2] Petitioners responded to the questions with supplemental responses on April 11, 2011.[3] On April 12, 2011, the Department requested additional information on certain issues.[4] On April 14, 2011, Petitioners provided a response to the Department's requests.[5] On April 14, 2011, the Department requested further clarification with respect to the Petition, which Petitioners submitted on April 15, 2011.[6] On April 18, 2011, the Department further clarified the scope of the Petition with Petitioners.[7]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that producers/exporters of steel wheels from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties, as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigation that they are requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" below). The Department also notes that, pursuant to section 702(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

Period of Investigation

The proposed period of investigation is January 1, 2010, through December 31, 2010.

Scope of Investigation

The products covered by this investigation are steel wheels from the PRC. For a full description of the scope of the investigation, *see* "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, May 9, 2011, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on March 30, 2011, the Department invited representatives of the Government of the PRC (the GOC) for consultations with respect to the CVD petition. On April 14, 2011, the Department held consultations with representatives of the GOC via a conference call. *See* Memorandum on Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petitions regarding Steel Wheels and Galvanized Steel Wire (April 15, 2011).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in

[1] *See* Petition for the Imposition of Countervailing Duties (Petition), filed on March 30, 2011. A public version of the Petition and all other public documents and public versions are available on the public file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

[2] *See* April 6, 2011, Petition for the Imposition of Countervailing Duties on Steel Wheels from the People's Republic of China: Supplemental Questions, and April 6, 2011, Petition for the Imposition of Antidumping Duties on Steel Wheels from the People's Republic of China: Supplemental Questions.

[3] *See* Supplement to the AD/CVD Petitions dated April 11, 2011 (First Supplement to the AD/CVD Petitions).

[4] *See* April 12, 2011, Memorandum to the File, regarding "Phone Conference with and Request for Further Information from Petitioners."

[5] *See* Supplement to the AD/CVD Petitions dated April 14, 2011 (Second Supplement to the AD/CVD Petitions).

[6] *See* Supplement to the AD/CVD Petitions dated April 15, 2011 (Third Supplement to the AD/CVD Petitions).

[7] *See* April 18, 2011, Memorandum to the File, regarding "Petitions for the Imposition of Antidumping and Countervailing Duties on Steel Wheels from the People's Republic of China—Clarification of Scope Language."

order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[8] Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that steel wheels constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.[9]

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section in Appendix I of this notice. To establish industry support, Petitioners provided their production of the domestic like product in 2010.[10] Petitioners compared their production to the estimated total production of the domestic like product for the entire domestic industry.[11] To support their estimation of industry support, Petitioners provided an affidavit from an employee of Accuride, who has 40 years professional experience in the steel industry.[12] We have relied upon data Petitioners provided for purposes of measuring industry support.[13]

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, we find that the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[14] Second, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[15] Finally, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate.[16]

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of steel wheels from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing steel wheels. In addition, Petitioners provide data that demonstrates that the alleged imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales and revenues, reduced production, reduced capacity utilization rate, decreased shipments, underselling, reduced employment, reduced hours worked, and reduced wages paid, decline in financial performance, and an increase in import penetration.[17] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[18]

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the Petition on steel wheels from the PRC and finds

[8] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

[9] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Steel Wheels from the People's Republic of China (Initiation Checklist), at Attachment II, Analysis of Industry Support for the Petitions Covering Steel Wheels from the People's Republic of China, on file in the CRU.

[10] *See* Volume I of the Petition at I–3.

[11] *See id.*

[12] *See* Second Supplement to the AD/CVD Petitions, at 1, and Exhibit 1.

[13] For further discussion, *see* Initiation Checklist at Attachment II.

[14] *See* section 702(c)(4)(D) of the Act, and Initiation Checklist at Attachment II.

[15] *See* Initiation Checklist at Attachment II.

[16] *See id.*

[17] *See* Volume I of the Petition, at I–6 to 12, and Exhibits 1–4 to 1–9.

[18] *See* Initiation Checklist at Attachment III.

that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of steel wheels in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Preferential Loans and Interest Rates

1. Policy Loans to the Steel Wheels Industry.
2. Treasury Bond Loans.
3. Preferential Loans for State-Owned Enterprises (SOEs).

B. Income Tax and Other Direct Tax Benefit Program

1. Income Tax Credits for Domestically-Owned Companies Purchasing. Domestically-Produced Equipment.

C. Subsidies for Foreign Invested Enterprises (FIEs)

1. Two Free, Three Half Program.
2. Local Income Tax Exemption and Reduction Programs for Productive FIEs.
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises.
4. Income Tax Reductions for Export-Oriented FIEs.

D. Indirect Tax and Tariff Exemption Programs

1. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises. Using Imported Equipment In Encouraged Industries.
2. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring.
3. Export Subsidies Characterized as "VAT Rebates."

E. Government Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)

1. Provision of Land to SOEs for LTAR.
2. Provision of Land Use Rights Within Donghai Economic Development Zone.[19]
3. Provision of Hot-Rolled Steel for LTAR.
4. Provision of Electricity for LTAR.

F. Grant Programs

1. State Key Technology Renovation Fund.
2. Export Assistance Grants in Zhejiang Province.[20]
3. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands.

For further information explaining why the Department is investigating these programs, *see* Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

A. Subsidies to Steel Wheel Producers Located in Economic Development Zones

B. Privatization Related Subsidies to Zhengxing Wheel Group Co., Ltd.

1. Debt Forgiveness.
2. Non-Arm's Length Privatization.

C. Export Loans From Policy Banks and State-Owned Commercial Banks

D. Currency Manipulation

For further information explaining why the Department is not investigating these programs, *see* Initiation Checklist.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of investigation. We intend to release the CBP data under the Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of subsidized steel wheels from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting

[19] This program was alleged as "Provision of Land Use Rights Within Designated Geographical Areas for Less Than Adequate Remuneration" in the Petition (*see* page III–22).

[20] This program was alleged as "Export Assistance Grants" in the Petition (*see* page III–25).

party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 19, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigation

The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8708.70.05.00, 8708.70.25.00, 8708.70.45.30, and 8708.70.60.30. These HTSUS numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[FR Doc. 2011–10078 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA385

Endangered Species; File No. 15672

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Molly Lutcavage, PhD, University of Massachusetts, Amherst, 108 Main Street, Gloucester MA, 01930, has applied in due form for a permit to take leatherback sea turtles (*Dermochelys coriacea*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 26, 2011.

ADDRESSES: The application and related documents are available for review by selecting Records Open for Public Comment from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15672 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division:

- By e-mail to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the e-mail),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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 222–226).

Research authorized under Permit No. 15672 would characterize the distribution, movements and dive behavior of leatherback sea turtles in the waters of New England. This research would inform our understanding of leatherback habitat utilization, foraging behavior, and threats posed by entanglement risk. Researchers propose to conduct research on up to 30 leatherback sea turtles annually. Researchers would use animals that have been disentangled from fishing gear by the stranding network or they would capture the animals using a breakaway hoopnet. Turtles would be measured, weighed, photographed and videotaped, flipper and passive integrated transponder tagged, blood, tissue, and fecal sampled, cloacal, oral, and nasal swabbed, tagged with an electronic transmitter, and released. The permit would be issued for 5 years.

Dated: April 19, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–10037 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seat on the Stellwagen Bank National Marine Sanctuary Advisory Council: (1) At-Large (Alternate) seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the Council's Charter. The Council consists also of three state and three federal non-voting ex-officio seats.

DATES: Applications are due by 10 June 2011.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov,* Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or email, or faxed to 781–545–8036.

FOR FURTHER INFORMATION: Contact *Nathalie.Ward@noaa.gov,* External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION:

The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and Federal government agencies. Since its establishment, the Council has played a vital role in advising NOAA on critical issues and is currently focused on the sanctuary's final five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 15, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–9867 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA244

Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Management Activities

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Sonoma County Water Agency (SCWA) to incidentally harass, by Level B harassment only, three species of marine mammals during estuary management activities conducted at the mouth of the Russian River, Sonoma County, California.

DATES: This authorization is effective for the period of one year, from April 21, 2011, through April 20, 2012.

ADDRESSES: A copy of the IHA and related documents are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Supplemental documents provided by SCWA may also be found at the same address: Pinniped Monitoring Plan; Report of Activities and Monitoring Results—April 1 to December 31, 2010; and Russian River Estuary Outlet Channel Adaptive Management Plan. NMFS' Environmental Assessment (2010) and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are available at the same site. Documents cited in this notice, including NMFS' Biological Opinion (2008) on the effects of Russian River management activities on salmonids, may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, the IHA would be effective for one year from date of issuance.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on February 15, 2011 from SCWA for renewal of an IHA for the taking, by Level B harassment only, of marine mammals incidental to ongoing activities conducted in management of the Russian River estuary in Sonoma County, California. SCWA was first issued an IHA, valid for a period of one year, on April 1, 2010 (75 FR 17382). Management activities include management of a naturally-formed barrier beach at the mouth of the river in order to minimize potential for flooding of properties adjacent to the Russian River estuary and enhance habitat for juvenile salmonids, and biological and physical monitoring of the estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on

rearing habitat for salmonids listed as threatened and endangered under the Endangered Species Act (ESA), occurs only from May 15 through October 15 (hereafter, the "lagoon management period"). All estuary management activities are conducted by SCWA in accordance with a Reasonable and Prudent Alternative (RPA) included in NMFS' Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted in the Russian River watershed (NMFS 2008). Species known from the haul-out at the mouth of the Russian River include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

Description of the Specified Activity

Breaching of naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence. As a result, pinnipeds hauled out on the beach may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of harbor seals, the species most commonly encountered at the haul-out, have been recorded extensively since 1972 at the haul-out near the mouth of the Russian River.

The estuary is located about 97 km (60 mi) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach; the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel 1994). The proposed action involves management of the estuary to prevent flooding while avoiding adverse modification to critical habitat for ESA-listed salmonids. During the lagoon management period only, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon, which will reduce flooding while maintaining appropriate conditions for juvenile salmonids. Additional breaches of barrier beach may be conducted for the sole purpose of reducing flood risk.

There are three components to SCWA's estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole objective of flood risk abatement; and (3) physical and biological monitoring in and near the estuary, required under the terms of the BiOp, to understand response to water surface elevation management in the estuary-lagoon system.

SCWA's estuary management activities generally involve the use of heavy equipment and increased human presence on the beach, in order to excavate and maintain an outlet channel from the lagoon to the ocean or to conduct artificial breaching. Pupping season for harbor seals at the mouth of the Russian River typically peaks during May. However, pupping is known to begin in March and may continue through the end of June; pupping season for harbor seals is conservatively defined here as March 15 to June 30. During pupping season, management events may occur over a maximum of two consecutive days per event and all estuary management events on the beach must be separated by a minimum no-work period of one week. The use of heavy equipment and increased human presence has the potential to harass hauled-out marine mammals by causing movement or flushing into the water. Mitigation and monitoring measures described later in this document are designed to minimize this harassment to the lowest practicable level.

Equipment (*e.g.,* bulldozer, excavator) is off-loaded in the parking lot of Goat Rock State Park and driven onto the beach via an existing access point. Personnel on the beach will include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there will be two or more additional people on the beach (SCWA staff or regulatory agency staff) to observe the activities. SCWA staff will be followed by the equipment, which will then be followed by an SCWA vehicle (typically a small pickup truck, to be parked at the previously posted signs and barriers on the south side of the excavation location).

Lagoon Outlet Channel Management

Active management of estuarine/lagoon water levels commences following the first closure of the barrier beach during this period. When this happens, SCWA monitors lagoon water surface elevation and creates an outlet channel when water levels in the estuary are between 4.5 and 7.0 ft (1.4–2.1 m) in elevation. Management practices will be incrementally modified over the course of the lagoon management period in an effort to improve performance in meeting the goals of the BiOp while preventing flooding.

Ideally, initial implementation of the outlet channel would produce a stable channel for the duration of the lagoon management period. However, the sheer number of variables and lack of past site-specific experience likely preclude this outcome, and succeeding excavation attempts may be required. The precise number of excavations would depend on uncontrollable variables such as seasonal ocean wave conditions (*e.g.,* wave heights and lengths), river inflows, and the success of previous excavations (*e.g.,* the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations. Based on lagoon management operations under similar conditions at Carmel River, and expectations regarding how wave action and sand deposition may increase beach height or result in closure, it is predicted that up to three successive outlet channel excavation events, at increasingly higher beach elevations, may be necessary to produce a successful outlet channel. In the event that an outlet channel fails through breaching (*i.e.,* erodes the barrier beach and forms a tidal inlet), SCWA would resume adaptive management of the outlet channel's width, slope, and alignment in consultation with NMFS and the California Department of Fish and Game (CDFG), only after ocean wave action naturally reforms a barrier beach and closes the river's mouth during the lagoon management period.

Implementation and Maintenance—Upon successful construction of an outlet channel, adaptive management, or maintenance, may be required for the channel to continue achieving performance criteria. In order to reduce disturbance to seals and other wildlife, as well as beach visitors, the amount and frequency of mechanical intervention will be minimized. As technical staff and maintenance crews gain more experience with implementing the outlet channel and observing its response, maintenance is anticipated to be less frequent, with events of lesser intensity. During pupping season, machinery may only operate on up to two consecutive working days, including during initial construction of the outlet channel. In addition, SCWA must maintain a one week no-work period between management events during pupping

season, unless flooding is a threat, to allow for adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach. SCWA seeks to avoid conducting management activities on weekends (Friday-Sunday) in order to reduce disturbance of beach visitors. In addition, activities are to be conducted in such a manner as to effect the least practicable adverse impacts to pinnipeds and their habitat as described later in this document (see "Mitigation").

Artificial Breaching

The estuary may close naturally throughout the year as a result of barrier beach formation at the mouth of the Russian River. Although closures may occur at any time of the year, the mouth usually closes during the spring, summer, and fall (Heckel 1994; Merritt Smith Consulting 1997, 1998, 1999, 2000; SCWA and Merritt Smith Consulting 2001). Closures result in lagoon formation in the estuary and, as water surface levels rise, flooding may occur. For decades, artificial breaching has been performed in the absence of natural breaching, in order to alleviate potential flooding of low-lying shoreline properties near the town of Jenner. Artificial breaching, as defined here, is conducted for the sole purpose of reducing flood risk, and thus is a different type of event, from an engineering perspective, than are the previously described lagoon management events. Artificial breaching activities occur in accordance with the BiOp, and primarily occur outside the lagoon management period (*i.e.,* artificial breaching would primarily occur from October 16 to May 14). However, if conditions present unacceptable risk of flooding during the lagoon management period, SCWA may artificially breach the sandbar a maximum of two times during that period. Implementation protocol would follow that described previously for lagoon outlet channel management events, with the exception that only one piece of heavy equipment is likely to be required per event, rather than two.

Physical and Biological Monitoring

SCWA is required by the BiOp and other State and Federal permits to collect biological and physical habitat data in conjunction with estuary management. Monitoring requires the use of boats and nets in the estuary, among other activities, and will require activities to occur in the vicinity of beach and river haul-outs (see Figure 4 of SCWA's application); these monitoring activities have the potential to disturb pinnipeds. The majority of monitoring is required under the BiOp and occurs approximately during the lagoon management period (mid-May through October or November), depending on river dynamics. Beach topographic surveys occur year-round.

Comments and Responses

NMFS published a notice of receipt of SCWA's application and proposed IHA in the **Federal Register** on March 18, 2011 (76 FR 14924). During the 30-day comment period, NMFS received comment from three private individuals and a letter from the Marine Mammal Commission (MMC).

The individuals expressed general concern about the proposed activities, as well as about management of Russian River water resources in general, and questioned the need for and efficacy of SCWA's lagoon management efforts to date. NMFS understands the concerns expressed but would point out that NMFS' 2008 BiOp contained a Reasonable and Prudent Alternative that was designed to address the full range of threats to salmonids in the Russian River. SCWA's lagoon construction and maintenance is an important component of the suite of prescribed management actions and, while difficult choices are the norm in natural resource management, there is no evidence to date that the incidental harassment of harbor seals described herein will result in long-term or population level impacts to harbor seals. One commenter further stated that long-term abandonment of the haul-out by harbor seals could occur due to the long-term, cumulative adverse impacts of construction activity over time and the secondary impacts of estuary management; notably, the likelihood of increased human and dog presence on the beach resulting from increased access. NMFS does not have jurisdiction over human access and use of Goat Rock Beach State Park, and would suggest that the Stewards Sealwatch program continue its excellent work in providing outreach and education to the beachgoing public. While the estuary management activities prescribed in the BiOp have goals additional to flood management (and thus potentially changed duration and intensity of management effort), there is no evidence, from decades of managing the estuary through artificial breaching, that the activities described herein will result in haul-out abandonment. In the future, any requests from SCWA for incidental take authorization will continue to be evaluated on the basis of the most up-to-date information available.

The MMC recommended that NMFS issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures as described in NMFS' notice of proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, and the northern elephant seal. None of these species are listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 14924, March 18, 2011).

Potential Effects of the Specified Activity on Marine Mammals

NMFS provided a detailed discussion of the potential effects of the specified activity on marine mammals in the notice of the proposed IHA (76 FR 14924; March 18, 2011). A summary of anticipated effects is provided below.

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. Pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to harass pinnipeds present on the beach. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically

exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus. In addition, eight other haul-outs exist nearby that may accommodate flushed seals. In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups.

California sea lions and northern elephant seals, which have been noted only infrequently in the action area, have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 84 percent, California sea lions flushed at a rate of only sixteen percent. The rate for elephant seals declined to 0.2 percent (VanBlaricom 2010). In the unlikely event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, harbor seal pups have been observed during the pupping season; therefore, NMFS has evaluated the potential for injury, serious injury or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during monitoring in 2010, but were inferred based on signs indicating pupping (*e.g.,* blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species. Pups less than one week old are characterized by being up to 15 kg, thin for their body length, or having an umbilicus or natal pelage.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf 1985; Cottrell *et al.* 2002; Burns *et al.* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past (*see* Table 1), and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding.

Therefore, based on a significant body of site-specific monitoring data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. NMFS has determined that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see "Mitigation" for more details). Further, the continued, and increasingly heavy, use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 14924; March 18, 2011). SCWA's estuary management activities will result in temporary physical alteration of the Jenner haul-out. With barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, will likely increase suitability and availability of habitat for pinnipeds. Biological and water quality monitoring will not physically alter pinniped habitat. In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmon abundance, ultimately providing more food for seals present within the action area.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under the previous authorization. In accordance with the 2010 IHA, SCWA submitted a Report of Activities and Monitoring Results, covering the period of April 1 through December 31, 2010. During the dates covered by the 2010 monitoring report, SCWA conducted one outlet channel implementation event, two artificial breaching events, and associated biological and physical monitoring. During the course of these activities, SCWA did not exceed the take levels authorized under the 2010 IHA. NMFS provided a detailed description of previous monitoring results in the notice of the proposed IHA (76 FR 14924; March 18, 2011).

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

SCWA will continue the following mitigation measures, as implemented during the previous IHA, designed to minimize impact to affected species and stocks:

- SCWA crews will cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.
- SCWA staff will avoid walking or driving equipment through the seal haul-out.
- Crews on foot will make an effort to be seen by seals from a distance, if

possible, rather than appearing suddenly at the top of the sandbar, again preventing sudden flushes.

- During breaching events, all monitoring will be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

In addition, SCWA will continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous IHA:

- SCWA will maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA will consult with NMFS and CDFG to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.
- Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

Equipment will be driven slowly on the beach and care will be taken to minimize the number of shut downs and start-ups when the equipment is on the beach. All work will be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring will be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation, to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, NMFS and SCWA have developed the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past twelve years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration. Based upon the SCWA's record of management at the mouth of the Russian River, as well as information from monitoring SCWA's implementation of the improved mitigation measures as prescribed under the previous IHA, NMFS has determined that the mitigation measures included in the final IHA provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The applicant has developed a Pinniped Monitoring Plan which describes the proposed monitoring efforts. This Monitoring Plan can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the IHA, and to address the following questions of interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?
2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?
3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?
4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

In summary, monitoring includes the following:

Baseline Monitoring

Seals at the Jenner haul-out are counted twice monthly for the term of the IHA. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. This census begins at local dawn and continues for eight hours. All seals hauled out on the beach are counted every thirty minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using high powered spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (*e.g.,* heavy fog in the afternoon). Counts are scheduled for two days out of each month, with the intention of capturing a low and high tide each in the morning and afternoon. Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each thirty-minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances will be recorded on a three-point scale that represents an increasing seal response to the disturbance. The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson's Levels 2 and 3 (*i.e.,* movement or flight) will be considered as harassment under the MMPA. Weather conditions are recorded at the beginning of each census. These include temperature, percent cloud cover, and wind speed (Beaufort scale). Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well (*see* Figure 2 of SCWA's Pinniped Monitoring Plan). The peripheral haul-outs are visited for ten minute counts twice during each baseline monitoring day. All pinnipeds hauled out were counted from the same vantage point(s) at each haul-out using a high-powered spotting scope or binoculars.

Estuary Management Event Monitoring

Activities associated with artificial breaching or initial construction of the outlet channel, as well as the maintenance of the channel that may be required, will be monitored for disturbances to the seals at the Jenner haul-out. A one-day pre-event channel survey will be made within one to three days prior to constructing the outlet channel. The haul-out will be monitored on the day the outlet channel is constructed and daily for up to the maximum two days allowed for channel excavation activities. Monitoring will also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring will correspond with that described under the "Baseline" section previously, with the exception that management activity monitoring duration is defined by event duration, rather than being set at eight hours. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with event monitoring. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out. This monitoring will not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked, but is useful in tracking general trends in haul-out use during disturbance. As volunteers are required to monitor these peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority will be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

For all counts, the following information will be recorded in thirty minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.,* temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—As described previously, the pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA will contact the NMFS stranding response network immediately and also report the incident to NMFS' Southwest Regional Office and NMFS Headquarters within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Reporting

SCWA is required to submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the Southwest Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the permit otherwise. This annual report will also be distributed to California State Parks and Stewards, and would be available to the public on SCWA's Web site. This report will contain the following information:

- The number of seals taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and seals when disturbance occurs;
- Weather conditions (*e.g.,* temperature, wind, *etc.*);
- Haul-out reoccupation time of any seals based on post activity monitoring;
- Tide levels and estuary water surface elevation; and
- Seal census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Estimated Take by Incidental Harassment

NMFS is authorizing SCWA to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through behavioral disturbance only. In addition, monitoring activities prescribed in the BiOp may result in harassment of additional individuals at the Jenner haul-out and at the three haul-outs located in the estuary. Estimates of the number of harbor seals, California sea lions, and northern elephant seals that may be harassed by the activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. As described previously in this document, monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the

haul-out declines during bar-closed conditions. Tables 1 and 2 detail the total number of authorized takes.

Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 14924; March 18, 2011).

TABLE 1.—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b,c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 103 [d]	Implementation: 3	Implementation: 309
Maintenance and Monitoring: May: 103 June: 100	Maintenance: May: 1 June-Sept: 4/month Oct: 1.	Maintenance: 913
July: 75 Aug: 17	Monitoring: June-Sept: 2/month.	Monitoring: 416
Sept: 5 Oct: 22	Oct: 1	Total: 1,638
Artificial Breaching		
Oct: 22 Nov: 11 Dec: 134 Jan: 118 Feb: 137 Mar: 167 Apr: 173 May: 103	Oct: 2 Nov: 2 Dec: 2 Jan: 1 Feb: 1 Mar: 1 Apr: 1 May: 1	Oct: 44 Nov: 22 Dec: 268 Jan: 118 Feb: 137 Mar: 167 Apr: 173 May: 103
	11 events maximum	Total: 1,032
Biological and Physical Habitat Monitoring in the Estuary		
1 [e]	65	65
Total		2,735

[a] For events occurring from April through November, average daily number of animals corresponds with data from Table 4. For events occurring from December through March, average daily number of animals corresponds with data from Table 5.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities listed in Table 2.

[c] Number of events for artificial breaching derived from historical data (Table 1). The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. These numbers likely represent an overestimate, as the average annual number of events is six.

[d] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from that period was used.

[e] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at each of the three river haul-outs.

TABLE 2.—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Species	Number of animals expected to occur	Number of events	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)			
California sea lion (potential to encounter once per event)	1	3	3
Northern elephant seal (potential to encounter once per event)	1	3	3
Artificial Breaching			
California sea lion (potential to encounter once per month, Sept-Apr)	1	8	8

TABLE 2.—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Species	Number of animals expected to occur	Number of events	Potential total number of individual animals that may be taken
Northern elephant seal (potential to encounter once per month Dec-May)	1	6	6
Biological and Physical Habitat Monitoring in the Estuary			
California sea lion (potential to encounter once per month Sept-Apr)	1	8	8
Northern elephant seal (potential to encounter once per month Dec-May)	1	6	6
Total.			
California sea lion			19
Elephant seal			15

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although SCWA's estuary management activities may harass pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. No mortality or injury is anticipated, nor will the action result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. However, breaching the sandbar has been shown to increase seal abundance on the beach, with seals quickly re-inhabiting the haul-out following cessation of activity. In addition, the implementation of the lagoon management plan may provide increased availability of prey species (salmonids). No impacts are expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

The number of animals authorized to be taken for each species of pinnipeds can be considered small relative to the population size. There are an estimated 34,233 harbor seals in the California stock, 238,000 California sea lions, and 124,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, NMFS is authorizing take, by Level B harassment only, of 2,735 harbor seals, nineteen California sea lions, and fifteen northern elephant seals, representing 8.0, 0.008, and 0.012 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the proposed IHA, because the take estimates include multiple instances of harassment to a given individual.

California sea lion and elephant seal pups are not known to occur within the action area and thus will not be affected by the specified activity. The action is not likely to cause injury or mortality to any harbor seal pup, nor will it impact mother-pup bonding. The peak of harbor seal pupping season occurs during May, when few management activities are anticipated. However, the pupping season has been conservatively defined as March 15–June 30 for mitigation purposes, and any management activity that is required during pupping season will be delayed in the event that a pup less than one week old is present on the beach. As described previously in this document, harbor seal pups are precocious, and mother-pup bonding is likely to occur within minutes. Delay of events will further ensure that mother-pup bonding is not interfered with.

Based on the foregoing analysis, behavioral disturbance to pinnipeds at the mouth of the Russian River will be of low intensity and limited duration. To ensure minimal disturbance, SCWA will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that SCWA's estuary management activities will result in the incidental take of small numbers of marine mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is required. As described elsewhere in this document, SCWA and the Corps consulted with NMFS under Section 7 of the ESA regarding the potential effects of their operations and maintenance activities, including SCWA's estuary management program, on ESA-listed salmonids. As a result of this consultation, NMFS issued the Russian River Biological Opinion (NMFS 2008) and RPA, which prescribes modifications to SCWA's estuary management activities.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to SCWA. NMFS signed a Finding of No Significant Impact (FONSI) on March 30, 2010. NMFS has reviewed SCWA's application and determined that there are no substantial changes to the proposed action and that there are no new direct, indirect, or cumulative effects to the human environment resulting from renewal of an IHA to SCWA. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Determinations

NMFS has determined that the impact of conducting the specific estuary management activities described in this notice and in the IHA request in the specific geographic region in Sonoma County, California may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to SCWA to conduct estuary management activities in the Russian River from the period of April 21, 2011, through April 20, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 20, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–10038 Filed 4–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Sean Linehan

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Sean Linehan a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent 7,222,525 (Navy Case 84945): Issued May 29, 2007, entitled "SKIN AND TISSUE SIMULANT FOR MUNITIONS TESTING".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 11, 2011.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: April 19, 2011.

D.J. Werner

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–9993 Filed 4–25–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 27, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Migrant Education Program (MEP) Migrant Student Information Exchange (MSIX) User Application.

OMB Control Number: 1810–0686.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals or households; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 10,452.

Total Estimated Number of Annual Burden Hours: 3,476.

Abstract: State educational agencies (SEAs) with Migrant Education Programs collect information from state and local education officials who desire access to the Migrant Student Information Exchange (MSIX) system. The form verifies the applicant's need for MSIX data and authorizes the user's access to that data. The burden hours associated with the data collection are required to meet the statutory mandate in Sec. 1308(b) of Elementary and Secondary Education Act, as amended by No Child Left Behind, which is to facilitate the electronic exchange by the SEAs of a set of minimum data elements to address the educational and related needs of migratory children.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4553. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–10024 Filed 4–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 27, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.

OMB Control Number: 1820–0655.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 82.

Total Estimated Number of Annual Burden Hours: 1,066.

Abstract: The Rehabilitation Services Administration (RSA) of the U.S. Department of Education (ED) will use this data collection form to capture the annual performance report data from the grantees funded under the American Indian Vocational Rehabilitation Services program. RSA and ED will use the information gathered annually to: (a) Comply with reporting requirements under the Education Department General Administration Regulations and provide annual information to Congress on activities conducted under the program, (b) measure performance on the program's Government Performance Result Act indicators, and (c) to collect information that is consistent with the common measures for federal job training programs.

The proposed changes to the existing form will improve user friendliness and the clarity and accuracy of data reported. These revisions are not of a substantial manner nor significantly different from the original collection, but are proposed to provide clarity and consistency. In many areas, the data element language has been modified with direct language instead of passive terminology and, in order to preserve consistency, all numerals are replaced with the corresponding word.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4579. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–10022 Filed 4–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of requests from the public to make oral comments concerning the ten (10) accrediting agencies and one (1) Federal institution scheduled for review.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 8060, Washington, DC 20006.

SUMMARY: This notice invites the public to make oral comments concerning the agencies/institution scheduled for review at the NACIQI's June 8–10, 2011 meeting. This notice is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: The NACIQI meeting will be held on June 8–10, 2011, from 8:30 a.m. to approximately 5:30 p.m., at the Holiday Inn and Suites, Commonwealth Ballroom, 625 First Street, Alexandria, Virginia 22314.

Changes to the Agenda: Since the publication of the March 9, 2011 **Federal Register** notice (76 FR 12947), the Department and the NACIQI Chairman changed the order of the scheduled activities. On June 8 and the morning of June 9, 2011, the agenda will now include ten (10) accrediting agencies that submitted petitions for the renewal of recognition and the review of one (1) Federal institution that submitted an application for degree-granting authority. (The agencies and the Federal institution scheduled for review are listed below.)

At approximately 4:00 p.m. on June 8, 2011, the NACIQI will hold an administrative session to conduct the members' annual required ethics training. The training session will not be open to the public. During the afternoon of June 9 and on June 10, 2011, the NACIQI will hear presentations and public comments on issues related to the reauthorization of the HEA. Following public comments on each, the NACIQI will then begin development of recommendations for the Committee's report to the Secretary on the reauthorization of the HEA.

The following agencies/institution are scheduled for review during the June 8 and June 9 agency review portion of the June 2011 NACIQI meeting:

Nationally Recognized Accrediting Agencies

Petitions for Renewal of Recognition

1. Accreditation Commission for Acupuncture and Oriental Medicine.
2. Accrediting Bureau of Health Education Schools.
3. Accrediting Commission of Career Schools and Colleges.
4. Accrediting Council for Independent Colleges and Schools.
5. American Bar Association, Council of the Section of Legal Education and Admission to the Bar.
6. American Osteopathic Association, Commission on Osteopathic College Accreditation.
7. American Psychological Association, Committee on Accreditation.
8. Commission on Accrediting of the Association of Theological Schools.
9. Council on Occupational Education.
10. Transnational Association of Christian Colleges and Schools, Accreditation Commission.

Note: Teacher Education Accreditation Council, Accreditation Committee, was listed in the **Federal Register** notice (76 FR 12947) published March 9, 2011; however, the agency will not be reviewed at this meeting.

Federal Agency Seeking Degree-Granting Authority

Air University, Maxwell Air Force Base, Montgomery, Alabama (request to award a Doctor of Philosophy degree in Military Strategy).

Under 10 U.S.C., Section 9134, in order for the U.S. Air Force's Air University to offer a new degree program, the Secretary of the U.S. Department of Education must have approved the degree in accordance with the Federal Policy Governing the Granting of Academic Degrees by Federal Agencies and Institutions (approved by a letter, dated December 23, 1954, from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare). Under the policy, the Secretary is required to establish a review committee to advise the Secretary concerning any proposal to authorize the granting of degrees by a Federal agency. After considering the criteria established by the policy, the review committee forwards its report concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's report and the Secretary's recommendation to the Office of Management and Budget and the Department of Defense. The Secretary uses the NACIQI as the review committee required for this purpose.

Instructions for Making a Third-Party Oral Comment Concerning the Agencies Scheduled for Review: There are two methods the public may use to make a third-party oral comment of three to five minutes concerning one of the agencies scheduled for review on June 8 and June 9, 2011.

Method One: Submit a request by e-mail in advance of the meeting to make a third-party oral presentation. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for a minimum of three minutes each. Each request must concern the recognition of a single agency or institution tentatively scheduled in this notice for review, must be received no later than thirty days after the date of publication of this notice, and must be sent to *aslrecordsmanager@ed.gov* with the subject line "Oral Comment Request re: (Agency/Institution Name." Your request (no more than one page maximum) must include:

1. The name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak; and,

2. A brief summary of the principal points to be made during the oral presentation.

Please do not send material directly to NACIQI members.

Method Two: Register on June 8 or June 9, 2011, for an oral presentation opportunity during the NACIQI's deliberations concerning a particular agency or institution scheduled for review. The requestor should provide his or her name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any). A total of up to fifteen minutes during each agency's/institution's review will be allotted for commenters who register on June 8 or June 9, 2011. Individuals or groups that register on June 8 or June 9, 2011, will be selected on a first-come, first-served basis. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who signed up the day of the meeting. The Committee may engage the commenter in discussion afterwards. If a person or group requests to make comments in advance, they cannot also register for an oral presentation opportunity on the meeting day.

Members of the public will be eligible to make third-party oral comments

concerning the agencies scheduled for review only in accordance with these instructions. The oral comments made will become part of the official record and will be considered by the Department and NACIQI in their deliberations. Individuals and groups making oral presentations concerning scheduled agencies/institution may not distribute written materials at the meeting.

Oral comments about agencies seeking continued recognition must relate to the Criteria for the Recognition of Accrediting Agencies, which are available at: *http://www.ed.gov/admins/finaid/accred/index.html.*

Comments concerning the Air University's degree-granting authority request must relate to the criteria used to evaluate the institution. Those criteria may be obtained by submitting a request to: *aslrecordsmanager@ed.gov* with the subject line listed as "Request for Degree-Granting Authority Criteria."

Written Comments: This notice invites third-party oral testimony about the agencies scheduled for review, not written comment. The **Federal Register** notice that requested written comments on the agencies scheduled for review was published in the **Federal Register** on March 9, 2011 (76 FR 12946). The NACIQI will receive and consider only written comments that were submitted as specified in the above referenced **Federal Register** notice.

Written and Oral Comments Concerning Reauthorization of the HEA: A separate **Federal Register** notice will be published that contains instructions for providing written or oral comments about reauthorization of the HEA.

NACIQI's Statutory Authority an Functions: The NACIQI is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U. S. C. 1011C. The NACIQI advises the Secretary of Education about:

—The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended;

—The recognition of specific accrediting agencies or associations, or a specific State approval agency;

—The preparation and publication of the list of nationally recognized accrediting agencies and associations;

—The eligibility and certification process for institutions of higher education under Title IV, HEA;

—The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and,

—Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: Individuals who will need accommodations for a disability in order to attend the June 8–10, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format), should contact Department staff by *telephone:* (202) 219–7011; or, *e-mail: aslrecordsmanager@ed.gov,* no later than May 15, 2011. We will attempt to meet requests after this date, but we cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

FOR FURTHER INFORMATION CONTACT: Contact Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, *telephone:* (202) 219–7009; *e-mail: Melissa.Lewis@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys* . At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–10033 Filed 4–25–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 8060, Washington, DC 20006.

ACTION: Opportunities for the public to make written comments and/or oral comments concerning the NACIQI's report on the reauthorization of the Higher Education Act (HEA).

SUMMARY: This notice invites the public to submit written comments and requests to make oral comments concerning the NACIQI's report on the reauthorization of the HEA. This notice is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: The NACIQI meeting will be held on June 8–10, 2011, from 8:30 a.m. to approximately 5:30 p.m., at the Holiday Inn and Suites, Commonwealth Ballroom, 625 First Street, Alexandria, VA 22314.

Changes to the Agenda: Since the publication of the March 9, 2011 **Federal Register** notice (74 FR 12947), the Department and the NACIQI Chairman changed the order of the scheduled activities. On June 8 and the morning of June 9, the NACIQI will now hold a traditional NACIQI meeting involving the review of specific accrediting agencies that submitted petitions for the renewal of recognition and a Federal institution that submitted an application for degree-granting authority. Refer to the **Federal Register** notices published on March 9, 2011 (76 FR 12947) and on April 26, 2011 concerning the meeting notice and instructions for submitting written comments and requests to make oral comments concerning the accrediting agencies and the Federal institution scheduled for review.

At approximately 4:00 p.m. on June 8, 2011, the NACIQI will hold an administrative session to conduct the members' annual required ethics training. The training session will not be open to the public. During the afternoon of June 9 and on June 10, 2011, the portion of the meeting concerning the reauthorization of the HEA will occur.

Agenda for the Reauthorization Portion of the Meeting: The reauthorization portion of the meeting will consist of presentations and public comments, which the NACIQI will then deliberate on, concerning the following three broad reauthorization-related issues that are described below.

Issue One: REGULATORY BURDEN and DATA NEEDS: This issue focuses on the concerns about the regulatory burdens and costs of accreditation to institutions, students, and taxpayers. Also included are questions about the nature, quality, and quantity of data gathering and reporting required on the part of institutions and accrediting agencies.

Issue Two: "THE TRIAD": This issue focuses on clarification of the roles, responsibilities, and capacities of federal, state, and accreditor entities in issues of accreditation and institutional aid eligibility. Included are questions about the link between institutional aid eligibility and accreditation.

Issue Three: ACCREDITOR SCOPE, ALIGNMENT, AND ACCOUNTABILITY: This issue focuses on accreditor scope, alignment, and accountability. Included are questions about the sectors and scope of varying accrediting agencies, the alignment of standards across accreditors, and accountability for accreditation decisions.

Submission of Written Comments Concerning the Reauthorization of the HEA: Submit your written comments by e-mail no later than May 26, 2011, to *aslrecordsmanager@ed.gov* with the subject line "Written Comments re: Issue Number (list Issue Number(s) from above issue description regarding the reauthorization of the HEA.) Do not send material directly to NACIQI members.

Only materials submitted by the deadline to the e-mail address listed in this notice, and in accordance with these instructions, become part of the official record concerning the reauthorization of the HEA and are considered by the Department and the NACIQI in their deliberations. Do not send material directly to the NACIQI members.

Instructions for Requests To Make Oral Comments Concerning the Reauthorization of the HEA: There are two methods the public may use to make an oral comment concerning the reauthorization of the HEA.

Method One: Submit a request by e-mail in advance of the meeting to make an oral comment. All individuals or groups submitting an advance request in accordance with this notice will be afforded an opportunity to speak for up to a maximum of three minutes each. Each request must be received no later than May 26, 2011, and must be sent to *aslrecordsmanagement@ed.gov* with the subject line "Oral Comment Request re: Issue Number (list Issue Number(s) from above issue description regarding the reauthorization of the HEA." Your request (no more than one page maximum) must include:

1. The name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any) of the person/group requesting to speak; and

2. A brief summary of the principal points to be made during the oral presentation.

Please do not send material directly to the NACIQI members.

Method Two: Depending on the day the issue will be reviewed, register on June 9 or 10, 2011, for an opportunity to comment on one or more of the issues during the NACIQI's deliberations on the reauthorization of the HEA. The requester should provide his or her name, title, affiliation, mailing address, e-mail address, telephone and facsimile numbers, and Web site (if any). Up to 30 minutes total will be allotted for oral commenters who register on June 9 or 10, 2011 (in addition to those commenters who signed up in advance). Individuals or groups that register to make oral comments June 9 or 10, 2011, will be selected on a first-come, first-served basis for each issue reviewed. If selected, each commenter may speak from three to five minutes, depending on the number of individuals or groups who registered for an oral presentation opportunity for each issue. The Committee may engage the commenter in discussion afterwards. If a person or group requests to make comments in advance, they cannot also sign up to make comments on June 9–10, 2011.

Members of the public will be eligible to make oral comments concerning the reauthorization of the HEA only in accordance with these instructions. The oral comments made will become part of the official record and will be considered by the Department and the NACIQI in their deliberations.

Written and Oral Comments Concerning the Agencies/Institutions Scheduled for Review on June 8–9, 2011: Two separate **Federal Register** notices were previously published on March 9, 2011 and April 26, 2011. Those notices contained the meeting notice and instructions for providing written or oral comments concerning the agencies and the Federal institution scheduled for review.

NACIQI'S Statutory Authority and Functions: The NACIQI is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

—The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended;
—The recognition of specific accrediting agencies or associations, or a specific State approval agency;
—The preparation and publication of the list of nationally recognized accrediting agencies and associations;
—The eligibility and certification process for institutions of higher education under Title IV, HEA;
—The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and
—Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Meeting: The Department will record the meeting and post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: Individuals who will need accommodations for a disability in order to attend the June 8–10, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format), should contact Department staff by *telephone:* (202) 219–7011; or, *e-mail: aslrecordsmanager@ed.gov,* no later than May 15, 2011. We will attempt to meet requests after this date, but we cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

For Further Information: Contact Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, *telephone:* (202) 219–7009; *e-mail:*

Melissa.Lewis@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** Digital System at: *http://www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–10032 Filed 4–25–11; 8:45 am]

BILLING CODE 4000–01–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: EC11–49–000

Applicants: Ameren Energy Generating Company

Description: Amendment to Application of Ameren Energy Generating Company, Filing supplements 203 application to include horizontal and vertical power analysis and requests shortened notice period of 10 days.

Filed Date: 04/12/2011

Accession Number: 20110412–5042

Comment Date: 5 p.m. Eastern Time on Friday April 29, 2011

Docket Numbers: EC11–69–000

Applicants: White Oak Energy Holdings LLC

Description: White Oak Energy Holdings LLC's Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action.

Filed Date: 04/18/2011

Accession Number: 20110418–5233

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2256–001

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–04–18 CAISO's CPM Compliance Filing to be effective 4/1/2011.

Filed Date: 04/18/2011

Accession Number: 20110418–5229

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Docket Numbers: ER11–3384–000

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance filing per Order issued in Docket No. EL08–47–006 to be effective 4/16/2011.

Filed Date: 04/18/2011

Accession Number: 20110418–5230

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–37–004

Applicants: E. ON U.S. LLC

Description: Penalty Distribution Compliance Filing of Louisville Gas & Electric Company, et. al.

Filed Date: 04/18/2011

Accession Number: 20110418–5200

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Docket Numbers: OA07–39–007; *OA08–71–007*

Applicants: Xcel Energy Services Inc., Public Service Company of Colorado

Description: Public Service Company of Colorado's Annual Report of Penalty Assessments and Distributions in Accordance with Order Nos. 890 and 890–A.

Filed Date: 04/18/2011

Accession Number: 20110418–5204

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Docket Numbers: OA11–7–000

Applicants: New York Independent System Operator, Inc.

Description: Annual Compliance Report of New York Independent System Operator, Inc. Regarding Unreserved Use and Late Study Penalties.

Filed Date: 04/18/2011

Accession Number: 20110418–5236

Comment Date: 5 p.m. Eastern Time on Monday, May 09, 2011

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9977 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–70–000.

Applicants: Iberdrola Renovables, S.A. and Its Public Utility Affiliates.

Description: Joint Application of Iberdrola Renovables, S.A. and Its Public Utility Affiliates under Section 203 of the Federal Power Act, and Requests for Waivers of Filing Requirements, Shortened Comment Period and Expedited Consideration.

Filed Date: 04/19/2011.

Accession Number: 20110419–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: EC11–71–000.

Applicants: FirstEnergy Generation Corp.

Description: FirstEnergy Generation Corp. Application for Authorization Pursuant to Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements and Confidential Treatment.

Filed Date: 04/19/2011.

Accession Number: 20110419–5174.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–75–000.

Applicants: Dempsey Ridge Wind Farm, LLC.

Description: EWG Self-Certification Dempsey Ridge Wind Farm, LLC.

Filed Date: 04/19/2011.

Accession Number: 20110419–5169.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–48–022.

Applicants: Powerex Corp.

Description: Powerex Corp. Notice of Non-Material Change in Status.

Filed Date: 04/19/2011.

Accession Number: 20110419–5115.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER10–3096–002.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35: WestConnect Experimental Tariff to be effective 9/28/2010.

Filed Date: 04/19/2011.

Accession Number: 20110419–5080.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–2074–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per Jan 20, 2011 Order in Docket ER11–2074–000 (ER09–1063–003) to be effective 6/18/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5123.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3051–001.

Applicants: Macho Springs Power I, LLC.

Description: Macho Springs Power I, LLC submits tariff filing per 35.17(b): MBR Compliance Filing to be effective 5/1/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5176.

Comment Date: 5 p.m. Eastern Time on Friday, April 29, 2011.

Docket Numbers: ER11–3385–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Rev. to Sch. 16 of the OATT to Adjust Filing and Effective Date to be effective 6/20/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5114.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3386–000.

Applicants: PJM Interconnection, L.L.C.

Description: Application of PJM Interconnection, L.L.C. Request for Limited Tariff Waiver and Request for Fast Track Processing.

Filed Date: 04/19/2011.

Accession Number: 20110419–5121.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3387–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–04–19 CAISO's Rate Schedule No. 69 and Termination of Rate Schedule No. 42 to be effective 5/1/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5122.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3388–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–04–19 CAISO's Service Agreement 1965 BAAPST with BANC to be effective 5/1/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5124.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3389–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 4–19–2011_PSCo-WestConnect-Extend-Term-Filing to be effective 7/1/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5125.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3390–000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.13(a)(2)(iii): IPL Changes in Depreciation Rates for Wholesale Production Service to be effective 6/30/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5126.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3391–000.

Applicants: Dempsey Ridge Wind Farm, LLC.

Description: Dempsey Ridge Wind Farm, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 10/1/2011.

Filed Date: 04/19/2011.

Accession Number: 20110419–5133.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3392–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Clean Up To Include ER11–2288–001 Compliance Revisions to be effective 4/20/2011.

Filed Date: 04/19/2011.
Accession Number: 20110419–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Docket Numbers: ER11–3393–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35: PNM WestConnect Experimental Tariff Compliance Filing to be effective 9/28/2010.
Filed Date: 04/19/2011.
Accession Number: 20110419–5177.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 10, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–228–000.
Applicants: City of New Bern, NC.
Description: Form 556 of PowerSecure, Inc. for the City of New Bern, NC facility at Food Lion 1368.
Filed Date: 04/19/2011.
Accession Number: 20110419–5090.
Comment Date: None Applicable.

Docket Numbers: QF11–229–000.
Applicants: City of New Bern, NC.
Description: Form 556 of PowerSecure, Inc. on behalf of the City of New Bern, NC at CarolinaEast Medical Center.
Filed Date: 04/19/2011.
Accession Number: 20110419–5091.
Comment Date: None Applicable.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–9978 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14126–000]

New Sweden Irrigation District, ID; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 29, 2011, New Sweden Irrigation District filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the New Sweden Hydroelectric Project to be located on the Snake River, in Jefferson and Bonneville counties, Idaho. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will consist of the following: (1) An existing 80-foot-wide diversion structure with four 13-foot-wide by 5-foot-high steel radial head gates; (2) a 3.5-mile-long existing canal varying from 75 to 100-foot-wide and 10 to 12-foot-deep; (3) a new powerhouse equipped with a single 0.9 megawatt Kaplan turbine; (4) a new 500-foot-long, 12.5-kilovolt transmission line connecting to the utility distribution system owned by Rocky Mountain Power; and (5) appurtenant facilities. The estimated annual generation of the New Sweden Irrigation Project would be 5.6 gigawatt-hours.

Applicant Contact: Mr. Nicolas E. Josten, GeoSense; 2742 Saint Charles Ave., Idaho Falls, ID 83404; *phone:* (208) 528–6152.

FERC Contact: Ian Smith; *phone:* (202) 502–8943.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14126–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 20, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9996 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14144–000]

Storage Development Partners, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, Storage Development Partners, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Vandenberg #5 Project (project) to be located on Vandenberg Air Force Base, in Santa Barbara County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be a pumped storage project and consist of the following: (1) An upper reservoir having a total storage capacity of 5,737 acre-feet at a normal maximum operating elevation of 1,600 feet mean sea level (msl); (2) five 9,700-foot-long, 25-foot-diameter steel lined penstocks extending between the upper reservoir's inlet/outlet and the pump/turbines below; (3) a breakwater area within the Pacific Ocean, serving as the lower reservoir; (4) an underground powerhouse with approximate dimensions of 250-feet-long by 75-feet-wide by 100-feet-high and containing five reversible pump/turbine-motor/generator units with a rated capacity of 239,282 kW each; (5) a 1000-foot-long, 800-foot-diameter concrete lined tailrace connecting the pump/turbine draft tubes with the lower inlet/outlet; (6) a lower inlet/outlet structure 100-feet below msl; (7) a 13-mile-long, 230-kilovolt (kV) transmission line extending from the powerhouse to a planned AC–DC converter; and (8) appurtenant facilities. The estimated annual generation of the Vandenberg #5 Project would be 3,496 gigawatt-hours.

Applicant Contact: Mr. James Petruzzi, Managing Partner, Storage Development Partners, LLC., 4900 Woodway, Suite 745, Houston, Texas 77056; *Telephone:* 713–840–9994.

FERC Contact: Kenneth Hogan 202–502–8434.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14144) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 20, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–9995 Filed 4–25–11; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 11, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Jonathan Ross Kasling of Hughes Springs, Texas, Individually; Mayo Givens Kasling III of Hughes Springs, Texas, Individually; Jonathan Ross Kasling of Hughes Springs, Texas; Mayo Givens Kasling III of Hughes Springs, Texas; Mayo Givens Kasling, Jr. of Hughes Springs, Texas and Mayo Givens Kasling, Jr. as Trustee for the Mayo G. Kasling III 1996 Trust and as Trustee for the Jonathan Ross Kasling 1996 Trust; Rebecca Lynn Kasling of Hughes Springs, Texas; Mayo Givens Kasling, Sr. of Hughes Springs, Texas; Catherine Denise Kasling DeWitt of Hughes Springs, Texas; Misty Morgan Lake of Hughes Springs, Texas; Randall Marc Morgan of Hughes Springs, Texas; Sarah Virginia Kasling Shelton of Hughes Springs, Texas and Sarah Virginia Kasling as Trustee for the Ricky Dub Shelton Jr. 1996 Trust and as Trustee for the Shelby Shelton 1996 Trust and as Trustee for the Trenton Shelton 1996 Trust; Roy Kemp Kasling of Austin, Texas and Roy Kemp Kasling as Trustee for the Alexandra Kasling 1996 Trust and as Trustee for the Natalie Kasling 1996 Trust; all as members of the Kasling Family Group, to retain control of 25 percent or more of the shares of Chalybeate Springs Corporation, Hughes Springs, Texas and thereby indirectly retain control of The First National Bank of Hughes Springs, Hughes Springs, Texas.

Board of Governors of the Federal Reserve System, April 21, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–10004 Filed 4–25–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM)

AGENCY: National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of SACATM on June 16–17, 2011, at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203. The meeting is open to the public with attendance limited only by the space available. The meeting will be videocast through a link at (*http://www.niehs.nih.gov/news/video/live*). SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM.

DATES: The SACATM meeting will be held on June 16 and 17, 2011. The meeting is scheduled from 8:30 a.m. Eastern Daylight Time to 5:30 p.m. on June 16 and 8:30 a.m. until adjournment on June 17. All individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/32822*) by June 9, 2011. In order to facilitate planning, persons wishing to make an oral presentation are asked to notify Dr. Lori White, NTP Designated Federal Officer, via online registration, phone, or email by June 9, 2011 (see **ADDRESSES** below). Written comments should also be received by June 9, 2011, to enable review by SACATM and NIEHS/NTP staff before the meeting.

ADDRESSES: The SACATM meeting will be held at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203. Public comments and other correspondence should be directed to Dr. Lori White (NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834 or e-mail: *whiteld@niehs.nih.gov*). Courier address: NIEHS, 530 Davis Drive, Room 2136, Morrisville, NC 27560. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). Requests should be made at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

Preliminary agenda topics include:

- NICEATM–ICCVAM Update
- Regulatory Acceptance of ICCVAM-Recommended Alternative Test Methods
- Report on Peer Review Panel Meeting: Evaluation of an *In Vitro* Estrogen Receptor Transcriptional Activation Test Method for Endocrine Disruptor Chemical Screening
- Federal Agency Research, Development, Translation, and Validation Activities Relevant to the NICEATM–ICCVAM Five-Year Plan
- Nominations to ICCVAM: Botulinum *In Vitro* Assays, *In Vitro* Pyrogen Assay Validation
- Outcome/Recommendations from the ICCVAM Workshop Series on Best Practices for Regulatory Safety Testing
- Outcomes/Recommendations from the International Workshop on Alternative Methods to Reduce, Refine, and Replace the Use of Animals in Vaccine Potency Testing: State of the Science and Future Directions
- Update from the Korean Center for the Validation of Alternative Methods
- Update from Health Canada
- Update from the Japanese Center for the Validation of Alternative Methods
- Update from the European Centre for the Validation of Alternative Methods

A copy of the preliminary agenda, committee roster, and additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/32822*) or available upon request (see **ADDRESSES** above). Following the SACATM meeting, summary minutes will be prepared and available on the NTP Web site or upon request.

Request for Comments

Both written and oral public input on the agenda topics is invited. Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation (if applicable), and sponsoring organization (if any) with the document. Time is allotted during the meeting for presentation of oral comments and each organization is allowed one time slot per public comment period. At least 7 minutes will be allotted for each speaker, and if time permits, may be extended up to 10 minutes at the discretion of the chair. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than for pre-registered speakers and will be determined by the number of persons who register at the meeting. In addition to in-person oral comments at the meeting, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8 a.m. until 5 p.m. on June 16 and 8:30 a.m. to adjournment on June 17, although public comments will be received only during the formal public comment periods, which will be indicated on the preliminary agenda. The access number for the teleconference line will be provided to registrants by email prior to the meeting.

Persons registering to make oral comments are asked to do so through the online registration form (*http://ntp.niehs.nih.gov/go/32822*) and to send a copy of their statement to Dr. White (see **ADDRESSES** above) by June 9, 2011, to enable review by SACATM, NICEATM–ICCVAM, and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution and to supplement the record.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under

NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about ICCVAM and NICEATM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov*).

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: April 18, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–10020 Filed 4–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: State Plan for the Temporary Assistance of Needy Families (TANF).

OMB No. 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline specifying how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. It is used to provide the public with information about the program.

Authority to require States to submit a State TANF plan is contained in section 402 of the Social Security Act, as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States are required to submit new plans periodically (*i.e.,* within a 27-month period).

We are proposing to continue the information collection without change.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title Amendments	18	1	3	54
State Plan	18	1	30	540

Estimated Total Annual Burden Hours: 594.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–9956 Filed 4–25–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Endocrinologic and Metabolic Drugs 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). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs 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 on May 19, 2011, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910. The hotel telephone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX 301–847–8533, e-mail: *EDMAC@fda.hhs.gov*, or FDA Advisory

Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. 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 and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 19, 2011, the committee will discuss the findings of the Action to Control Cardiovascular Risk in Diabetes-Lipid (ACCORD Lipid) trial as they relate to the efficacy and safety of the approved new drug application (NDA) 22224, TRILIPIX (fenofibric acid) delayed release capsules, manufactured by Abbott Laboratories.

TRILIPIX (fenofibric acid), an active form of fenofibrate, is indicated for use in combination with a 3-hydroxy-3-methyl-glutaryl-coenzyme A reductase inhibitor, commonly referred to as a "statin", to lower high levels of serum triglycerides and raise low levels of high-density lipoprotein cholesterol in patients with mixed dyslipidemia and coronary heart disease (CHD) or CHD risk equivalent who are on optimal statin therapy to achieve their low-density lipoprotein cholesterol goal.

The ACCORD Lipid study was a randomized, double-blind, placebo-controlled add-on trial, which is the kind of clinical trial designed to provide data with strong measures of accuracy and reliability. The ACCORD Lipid study evaluated the efficacy and safety of adding fenofibrate therapy to treatment with the statin, simvastatin in subjects with type 2 diabetes mellitus. The results of the ACCORD Lipid trial indicated that there was no statistically significant difference in the proportion of clinical trial subjects treated with simvastatin plus placebo verus simvastatin plus fenofibrate who experienced a major adverse cardiac event. In a prespecified subgroup analysis from the ACCORD Lipid trial, there was an increase in the proportion of female trial subjects treated with simvastatin plus fenofibrate versus simvastatin plus placebo who experienced a major adverse cardiac event. The clinical significance of this finding is unclear.

An additional safety concern associated with the use of fenofibrate plus simvastatin, or any other statin, is muscle toxicity.

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 link.

Procedure: 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 May 12, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 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 May 5, 2011. 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 May 6, 2011.

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 Paul Tran 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: April 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10003 Filed 4–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DEM Fellowships.

Date: June 15–16, 2011.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition

Date: June 22, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.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: April 20, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10008 Filed 4–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB K awards review (1022/10).

Date: June 24, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy Two Plaza, 6707 Democracy Boulevard, Suite #242, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: April 20, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10009 Filed 4–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Transportation Worker Identification Credential (TWIC) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 Day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement, Office of Management and Budget (OMB) control number 1652–0047, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. OMB approved the collection of information for six months and TSA now seeks the maximum three-year approval. The collection involves the submission of identifying and other information by individuals applying for a TWIC and a customer satisfaction survey.

DATES: Send your comments by June 27, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0047; Transportation Worker Identification Credential (TWIC) Program. TSA developed the Transportation Worker Identification Credential (TWIC) program to mitigate threats and vulnerabilities in the national transportation system. TWIC is a common credential for all personnel requiring unescorted access to secure areas of facilities and vessels regulated under the Maritime Transportation Security Act (MTSA) and all mariners holding U. S. Coast Guard credentials. Before issuing an individual a TWIC, TSA performs a security threat assessment, which requires TSA to collect certain personal information such as name, address, and date of birth. Applicants are also required to provide fingerprints and undergo a criminal history records check.

The program implements authorities set forth in the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71; Nov. 19, 2002; sec. 106), the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295; Nov. 25, 2002; sec. 102), and the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; Aug. 10, 2005; sec. 7105), codified at 49 U.S.C. 5103a(g). TSA and the U. S. Coast Guard (Coast Guard) issued a joint notice of proposed rulemaking (NPRM) on May 22, 2006, 71 FR 29396. After consideration of public comments on the NPRM, TSA issued a joint final rule with the Coast Guard on January 25, 2007 (72 FR 3492), applicable to the maritime transportation sector that would require this information collection.

TSA collects data from applicants during an optional pre-enrollment step or during the enrollment session at an enrollment center. TSA will use the information collected to conduct a security threat assessment, which includes: (1) A criminal history records check; (2) a check of intelligence databases; and (3) an immigration status check. TSA invites all TWIC applicants to complete an optional survey to gather information on the applicants' overall customer satisfaction with the

enrollment process. This optional survey is administered by a Trusted Agent (representative of the TWIC enrollment contractor, who performs enrollment functions) during the process to activate the TWIC. These surveys are collected at each enrollment center and compiled to produce reports that are reviewed by the contractor and TSA. The current estimated annualized reporting burden is 2,630,719 hours and the estimated annualized cost burden is $57,002,236.

Issued in Arlington, Virginia, on April 20, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–9982 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Highway Corporate Security Review

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement (ICR), Office of Management and Budget (OMB) control number 1652–0036, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The ICR will assess the current security practices in the highway and motor carrier industry by way of its Highway Corporate Security Review (CSR) Program, which encompasesses site visits and interviews, and is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's missions.

DATES: Send your comments by June 27, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0036; Corporate Security Review. Under the Aviation and Transportation Security Act (ATSA) [1] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for "security in all modes of transportation * * * including security responsibilities * * * over modes of transportation that are exercised by the Department of Transportation." [2] TSA has additional authorities as well. TSA is specifically empowered to develop policies, strategies, and plans for dealing with threats to transportation,[3] ensure the adequacy of security measures for the transportation of cargo,[4] oversee the implementation and ensure the adequacy of security measures at transportation facilities,[5] and carry out other appropriate duties relating to transportation security.[6]

One way TSA carries out its surface transportation responsibilities is by assessing the current security practices in the trucking, school bus, and motor coach industries, as well as at State Departments of Transportation (DOTs), by way of its Corporate Security Review (CSR) program. The CSR program encompasses site visits and interviews, and is one piece of a much larger domain awareness, prevention, and protection program in support of TSA's and the Department of Homeland Security's missions. TSA is seeking to renew its OMB approval for this information collection so that TSA can continue to ascertain minimum security standards and identify coverage gaps, activities critical to carrying out its transportation security mission.

The CSR is an "instructive" review that provides TSA with an understanding of certain surface transportation owner/operators' security programs, if they have adopted such programs. In carrying out CSRs, Transportation Security Specialists (TSS) from TSA's Highway and Motor Carrier Division (HMC) and Transportation Security Inspectors-Surface (TSI–S) conduct site visits of trucking (excluding hazardous materials shippers and carriers), school bus, motor coach companies and State DOTs throughout the nation. The TSA representatives analyze the owner's/operator's security plan, if the owner/operator has adopted one, and determines if the mitigation measures included in the plan are being properly implemented. In addition to examining the security plan document, TSA reviews one or more assets of the owner/operator or State DOT.

During the site visits, TSA completes a CSR form, which contains questions concerning ten topics: Management and oversight of the security plan, threat assessment, criticality assessment, vulnerability assessment, personnel security, training, physical security countermeasures, en route security, information technology security, and security exercises and drills. TSA conducts this collection through voluntary face-to-face visits at the headquarters of the surface transportation owners/operators. Typically, TSA sends one employee to conduct a two to three hour discussion/interview with representatives from the

[1] Public Law 107–71, 115 Stat. 597 (November 19, 2001).

[2] *See* 49 U.S.C. 114(d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296, 116 Stat. 2315 (2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in sec. 403(2) of the HSA.

[3] 49 U.S.C. 114(f)(3).

[4] 49 U.S.C. 114(f)(10).

[5] 49 U.S.C. 114(f)(11).

[6] 49 U.S.C. 114(f)(15).

owner/operator. TSA plans to collect information from businesses of all sizes in the course of conducting these surface mode CSRs.

TSA conducts these interviews to ascertain information on security measures and to identify security gaps. The interviews also provide the TSA with a method to encourage the surface transportation owners/operators affected by the CSRs to be diligent in effecting and maintaining security-related improvements. This program provides TSA with real-time information on current security practices within the trucking, school bus, and motor coach modes of the surface transportation sector. This information allows TSA to adapt programs to the changing threat dynamically, while incorporating an understanding of the improvements owners/operators make in their security posture. Without this information, the ability of the TSA to perform its security mission would be severely hindered.

Additionally, the relationships these face-to-face contacts foster are critical to the TSA's ability to reach out to the surface transportation stakeholders affected by the CSRs. The relationships foster a sense of trust and a willingness to share information with the Federal Government. TSA assures respondents the portion of their responses deemed Sensitive Security Information (SSI) will be handled consistent with 49 CFR parts 15 and 1520.

The annual hour burden for this information collection is estimated to be 1,500 hours. While TSA estimates a total of 500 potential respondents, this estimate is based on TSA conducting 500 visits per year, each visit lasting two to three hours. TSA estimates no annual cost burden to respondents.

Issued in Arlington, Virginia, on April 20, 2011.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–9983 Filed 4–25–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–12]

Notice of Proposed Information Collection for Public Comment; Indian Community Development Block Grant Information Collection

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* June 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or by e-mail to *Colette.Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Community Development Block Grant Information Collection.

OMB Control Number: 2577–0191.

Description of the need for the information and proposed use: Title I of the Housing and Community Development Act of 1974, which authorizes Community Development Block Grants, requires that grants for Indian Tribes be awarded on a competitive basis. The purpose of the Indian Community Development Block Grant (ICDBG) program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low and moderate-income persons. The law specifies four criteria or options that are considered to meet this objective. The four options or criteria are: Area benefit; limited clientele; housing; job creation/retention. Eligible applicants include Federally recognized Tribes, which include Alaska Native communities, and Bureau of Indian Affairs or Indian Health Service determined Tribally authorized Tribal organizations.

The ICDBG program regulations can be found at 24 CFR 1003. The ICDBG program for Indian Tribes and Alaska Native villages requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the requirements are essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars.

ICDBG applicants must submit a complete application package which includes an Application for Federal Assistance (SF–424), Supplement Survey on Ensuring Equal Opportunity for Applicants (SF–424 SUPP), Applicant/Recipient Disclosure/Update Report (HUD–2880), Implementation Schedule (HUD–4125), Cost Summary (HUD–4123) and a Program Outcome Logic Model (HUD–96010). If the applicant has a waiver of the electronic submission requirement and is submitting a paper application, an Acknowledgement of Application Receipt (HUD–2993) must also be submitted. If the applicant is a Tribal organization, a resolution from the Tribe stating that the Tribal organization is submitting an application on behalf of the Tribe must also be included in the application package.

Section 105 of the 1974 Housing and Community Development Act (42 U.S.C. 5305) was amended by section 588 of

the Quality Housing and Work Responsibility Act of 1998 creating a new subsection (h) entitled, "Prohibition on Use of Assistance for Employment Relocation Activities." This subsection prohibits the use of Community Development Block Grant funds to facilitate the relocation of for-profit businesses from one labor market to another if the relocation is likely to result in significant job loss. HUD's regulations for the ICDBG program were amended to add § 1003.209, *Prohibition on use of assistance from employment relocation activities,* and revise § 1003.505, *Records to be maintained,* to include the statement, "This includes establishing and maintaining records demonstrating that the recipient has made the determinations required as a condition of eligibility of certain activities, including as prescribed in § 1003.209."

The ICDBG regulations at § 1003.209 prohibit certain job relocation activities that results in disinvestment in low and moderate income Tribal communities. ICDBG recipients are prohibited from using ICDBG funds to facilitate the relocation of for-profit businesses from one "identified service area" as defined in § 1003.4, to another if the relocation is likely to result in significant job loss. To show compliance with the statute and regulations, ICDBG recipients that provide ICDBG assistance to a business must require and obtain, as a condition of the assistance, a certification from the assisted business that it has no plans to relocate jobs. If the assistance results in business relocation, the agreement must provide that the business will reimburse the ICDBG recipient for any assistance provided to, or expended on behalf of the business.

ICDBG recipients are required to submit a quarterly Federal Financial Report (SF–425) that provides a snapshot of the grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (Title 24 CFR 1003.501(16))

The government-wide administrative requirements for grants and cooperative agreements to State, local, and Federally recognized Indian Tribal governments codified by HUD at 24 CFR part 85 require that grantees and sub-grantees "take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible" (§ 85.36(e)). Consistent with these regulations, § 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity reports being due to HUD on October 10 of each year (HUD–2516).

At the end of each one-year period and at grant closeout the recipient is required to submit a narrative status and evaluation report that describes: (1) Progress on completing approved activities; (2) a breakdown of major project activity or category expenditures; and (3) an assessment of program effectiveness at grant closeout. Recipients are also to report on program outputs and outcomes through the Program Outcome Logic Model (HUD–96010). (Title 24 CFR 1003.506)

The information collected will allow HUD to accurately audit the program.

Agency form number: SF–424, HUD–2880, HUD–2993, SF–424–SUPP, HUD–96010, HUD–2994–A, HUD–4123, HUD–4125, SF–425, HUD–2516, narrative status and evaluation report.

Members of affected public: Native American Tribes, Alaska Native communities and corporations, and Tribal organizations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The Estimated number of respondents is 225 annually with one response per respondent. The average number for each response is 40 hours, for a total reporting burden of 10,095 hours.

Status of the proposed information collection: Revision of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 19, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–10044 Filed 4–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–36]

Notice of Submission of Proposed Information Collection to OMB Consolidated Plan and Annual Performance Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is collected from all localities and states participating in any one of CPD's four formula grant programs to determine each jurisdiciton's compliance with statutory and regulatory requirements.

DATES: *Comments Due Date:* May 26, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0117) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov*; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Consolidated Plan and Annual Performance Report.

OMB Approval Number: 2506–0117.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information is collected from all

localities and states participating in any one of CPD's four formula grant programs to determine each jurisdiciton's compliance with statutory and regulatory requirements.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,150	2		245.087		563,700

Total Estimated Burden Hours: 563,700.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 20, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–10047 Filed 4–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–13]

Notice of Proposed Information for Public Comment; Public Housing Authority Executive Compensation Information

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Authority Executive Compensation Information.

OMB Control Number, if applicable: New (Pending OMB Approval).

Description of the need for the information and proposed use: Under current law, non-profit organizations receiving Federal tax exemptions are required to report to the IRS annually the names and compensation of their five current highest compensated employees. Public housing authorities receive significant direct Federal funds, and to promote similar public transparency and to enhance oversight by HUD and by state and local authorities, the same information should be made available as to public housing authorities. After collecting this compensation information, HUD plans to make it available on a publicly accessible Web site.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,372. The number of respondents is 4,116, the number of responses is 4,116, the frequency of response is annually, and the burden hour per response is 20 minutes.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 15, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public Indian Housing.

[FR Doc. 2011–10046 Filed 4–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–N–04]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Indian Community Development Block Grant Program

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's FY 2011 Indian Community Development Block Grant (ICDBG) Program NOFA. Specifically, this NOFA announces the availability of approximately $64,870,000 million made available under the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, approved April 15, 2011, Indian Community Development Block Grant funds, along with any unobligated and unused funds remaining from previous years.

The purpose of the ICDBG program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low- and moderate-incomes as defined in 24 CFR 1003.4. The ONAP in HUD's Office of Public and Indian Housing administers the program.

The notice providing information regarding the application process, funding criteria and eligibility requirements, application and instructions can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.* The link from the funds available page will take you to the agency link on Grants.gov.

The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 14.263. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: April 20, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–10049 Filed 4–25–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Outer Continental Shelf (OCS) Scientific Committee (SC); Announcement of Plenary Session

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Meeting.

SUMMARY: The OCS Scientific Committee will meet at the Holiday Inn Cape Cod in Hyannis, Massachusetts.

DATES: Tuesday, May 17, 2011, from 9 a.m. to 4 p.m.; Wednesday, May 18, 2011, from 8 a.m. to 4:30 p.m.; and Thursday, May 19, 2011, from 10 a.m. to 4 p.m.

ADDRESSES: Holiday Inn Cape Cod, 1127 Iyannough Road, Hyannis, Massachusetts 02601, telephone (508) 775–1153.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from BOEMRE by emailing Ms. Carolyn Beamer at *carolyn.beamer@boemre.gov.* Other inquiries concerning the OCS SC meeting should be addressed to Dr. Rodney Cluck, Chief, Environmental Studies Program, Environmental Division, Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817, or by calling (703) 787–1656 or via e-mail at *rodney.cluck@boemre.gov.*

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of the BOEMRE. The SC will review the relevance of the research and data being produced to meet BOEMRE scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

The Committee will meet in plenary session on Tuesday, May 17. The Director will address the Committee on the general status of the BOEMRE and its activities. There will be a presentation on Alternative Energy Programs: Current Status and Next Steps, Updates of Activities Pertaining to the Priorities of the National Ocean Policy, Atlantic Governance Councils (NROC, MARCO), as well as an Update of Ongoing and Future Research Pertaining to the Deepwater Horizon Oil Spill. Following these presentations BOEMRE regional officials will discuss their most pertinent and current issues.

On Wednesday, May 18, the Committee will meet in discipline breakout sessions (i.e., biology/ecology, physical sciences, and social sciences) to review the specific studies plans of the BOEMRE regional offices for Fiscal Years 2012–2014.

On Thursday, May 19, the Committee will meet in plenary session for reports of the individual discipline breakout sessions of the previous day and to continue with Committee business.

The meetings are open to the public. Approximately 40 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: April 14, 2011.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–10034 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Native American Business Development Institute (NABDI) Funding Solicitations and Reporting: Comment Request

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: The Division of Economic Development (DED), Office of Indian Energy and Economic Development (IEED) seeks to spur job growth and sustainable economies on American Indian reservations. The DED created the Native American Business Development Institute (NABDI) to provide tribes and tribal businesses with expert advice regarding economic development matters. In compliance with the Paperwork Reduction Act of 1995, DED is seeking comments on a proposed information collection related to the NABDI's funding of economic development feasibility studies (studies) and long-term strategic, reservation-wide economic development plans (plans). Federally recognized Indian tribes, on their own behalf or on behalf of tribally owned business, may apply for the funding by providing certain information. Applicants receiving funding must provide a final report summarizing the progress of and results of studies and plans. This notice requests comments on the information

collection associated with the application and final report.

DATES: Interested persons are invited to submit comments on or before May 26, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Mr. Victor Christiansen, Division of Economic Development, Office of Indian Energy and Economic Development, U.S. Department of the Interior, Room 14—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, fax (202) 208–4564; e-mail: *Victor.Christiansen@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information from Mr. Victor Christiansen, Division of Economic Development, Office of Indian Energy and Economic Development, U.S. Department of the Interior, *Telephone:* (202) 219–0739. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The DED established the NABDI to provide technical assistance funding to federally recognized American Indian tribes seeking to retain universities and colleges, private consulting firms, non-academic/non-profit entities, or others to prepare studies of economic development opportunities or plans. These studies and plans will empower American Indian tribes and tribal businesses to make informed decisions regarding their economic futures. Studies may concern the viability of an economic development project or business or the practicality of a technology a tribe may choose to pursue. The DED will specifically exclude from consideration proposals for research and development projects, requests for funding of salaries for tribal government personnel, funding to pay legal fees, and requests for funding for the purchase or lease of structures, machinery, hardware or other capital items. Plans may encompass future periods of five years or more and include one or more economic development factors including but not limited to land and retail use, industrial development, tourism, energy, resource development and transportation.

This is an annual program whose primary objective is to create jobs and foster economic activity within tribal communities. The DED will administer the program within IEED; and studies and plans as described herein will be the sole discretionary projects DED will consider or fund absent a competitive bidding process. When funding is available, DED will solicit proposals for studies and plans. To receive these funds, tribes may use the contracting mechanism established by Public Law 93–638, the Indian Self-Determination Act or may obtain adjustments to their funding from the Office of Self-Governance. See 25 U.S.C. 450 *et seq.*

Interested applicants must submit a tribal resolution requesting funding, a statement of work describing the project for which the study is requested or the scope of the plan envisioned, the identity of the academic institution or other entity the applicant wishes to retain (if known) and a budget indicating the funding amount requested and how it will be spent. The DED expressly retains the authority to reduce or otherwise modify proposed budgets and funding amounts.

Applications for funding will be juried and evaluated on the basis of a proposed project's potential to generate jobs and economic activity on the reservation.

II. Request for Comments

The DED requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0XXX.

Type of Review: New.

Title: Native American Business Development Institute (NABDI) Funding Solicitations and Reporting.

Brief Description of Collection: Indian tribes that would like to apply for NABDI funding must submit an application that includes certain information. A complete application must contain:

- A duly-enacted, signed resolution of the governing body of the tribe;
- A proposal describing the planned activities and deliverable products; and
- The identity (if known) of the academic institution, private consultant, non-profit/non-academic entity, or other entity the tribe has chosen to perform the study or prepare the plan; and
- A detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses, though DED reserves authority to reduce or otherwise modify this budget.

The DED requires this information to ensure that it provides funding only to those projects that meet the economic development and job creation goals for which NABDI was established. Applications will be evaluated on the basis of the proposed project's potential to generate jobs and economic activity on the reservation. Upon completion of the funded project, a tribe must then submit a final report summarizing events, accomplishments, problems and/or results in executing the project. The DED estimates that approximately 20 tribes will apply each year, and that DED will accept approximately all 20 into the program annually.

Respondents: Indian tribes with trust or restricted land.

Number of Respondents: 20 applicants per year; 20 project participants each year.

Estimated Time per Response: 40 hours per application; 1.5 hours per report.

Frequency of Response: Once per year for applications and final report.

Total Annual Burden to Respondents: 830 hours (800 for applications and 30 for final reports).

Dated: April 11, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–9672 Filed 4–20–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat constituting the dependent resurvey of a portion of the subdivisional lines and a portion of Mineral Survey No. 3412, and the metes-and-bounds survey of lots 2, 7, 9, 13 and 20, in section 9, T. 24 N., R. 5 E. of the Boise Meridian, Idaho, Group Number 1293, was accepted January 6, 2011.

The plat constituting the entire survey record of the dependent resurvey of portions of the Third Standard Parallel North (north boundary) and subdivisional lines, and the subdivision of section 2, T. 12 N., R. 38 E., Boise Meridian, Idaho, Group Number 1303, was accepted January 20, 2011.

The plat constituting the dependent resurvey of a portion of the west boundary and subdivisional lines, and the dependent resurvey of the Gem Mill Site, Mineral Survey No. 1949 B, located in the NE¼ NW¼ of section 30, T. 22 N., R. 24 E., of the Boise Meridian, Idaho, Group Number 1306, was accepted January 27, 2011.

The plat constituting the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 32, 33, and 34, T. 15 S., R. 35 E., of the Boise Meridian, Idaho, Group Number 1298, was accepted February 3, 2011.

The plat constituting the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 13 and 24, T. 1 N., R. 18 E., of the Boise Meridian, Idaho, Group Number 1307, was accepted February 10, 2011.

The plat representing the dependent resurvey and subdivision of sections 22 and 24, T. 13 N., R. 38 E., Boise Meridian, Idaho, Group Number 1311, was accepted March 11, 2011.

The supplemental plat in sections 27, 30, and 34, T. 3 N., R. 16 E., Boise Meridian, Idaho, Group Number 1340, accepted March 14, 2011.

The plat constituting the entire survey record of the dependent resurvey of a portion of Mineral Survey Number 3068A and B, in section 25, T. 4 N., R. 18 E., Boise Meridian, Idaho, Group Number 1304, was accepted March 29, 2011.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and 1894 meanders of the North Fork of the Payette River in sections 12 and 13, and the subdivision of sections 12, 13, and 24, and the survey of a portion of the 1998 and 2007–2009 right bank meanders of the North Fork of the Payette River, the survey of certain islands in the North Fork of the Payette River in sections 12 and 13, the survey of the 2007–2009 informative traverse of portions of the right bank of the North Fork of the Payette River in sections 12 and 13, and the survey of a 1998 and 2007–2009 partition line in section 13, T. 17 N., R. 2 E., Boise Meridian, Idaho, Group Number 1252, was accepted February 24, 2011.

SUMMARY: *For Group Number 1252:* The Bureau of Land Management (BLM) will file the plat of survey of the lands described above in the BLM Idaho State Office, Boise, Idaho 30 days from the date of publication in the **Federal Register**.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the 7th Standard Parallel North (north boundary), the Boise Meridian (west boundary), and subdivisional lines, and the subdivision of sections 5, 6, 7, 8, 17, 18, 20, 21, 29, and 32, T. 35 N., R. 1 E., Boise Meridian, Idaho, Group Number 1233, was accepted February 24, 2011.

The plat constituting the dependent resurvey of a portion of the subdivision in section 27, in T. 35 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1302, was accepted February 25, 2011.

The supplemental plat in sections 10 and 11, T. 2 S., R. 37 E., Boise Meridian, Idaho, Group 1268, accepted March 15, 2011.

Dated: April 15, 2011.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–10001 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L14300000.ET0000; WYW 115104]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6886 for an additional 20-year term. PLO No. 6886 withdrew approximately 21,636.29 acres of National Forest System land from location and entry under the United States mining laws to protect unique topographic characteristics and recreation values of the Snowy Range Area. The withdrawal created by PLO No. 6886 will expire on October 7, 2011, unless extended. This notice also gives an opportunity for the public to comment on the proposed action and announces the date, time, and location of a public meeting.

DATES: Comments must be received by July 25, 2011.

ADDRESSES: Comments should be sent to the Forest Supervisor, U.S. Forest Service, Region 2, 2468 Jackson Street, Laramie, Wyoming 82070 or the Wyoming State Director, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Mary Sanderson, U.S. Forest Service, Region 2, Supervisors Office, 2468 Jackson Street, Laramie, Wyoming 82070, 307–745–2363, or e-mail *msanderson@fs.fed.us*, or Janelle Wrigley, Bureau Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6257, or e-mail *Janelle_Wrigley@blm.gov.*

SUPPLEMENTARY INFORMATION: The USDA Forest Service filed an application requesting that the Department of the

Interior's Assistant Secretary for Land and Minerals Management extend PLO No. 6886 (56 FR 50661 (1991)), which withdrew approximately 21,636.29 acres of National Forest System lands located in Albany and Caribou Counties, Wyoming, from location and entry under the United States mining laws (30 U.S.C. ch. 2) for an additional 20-year term. PLO No. 6886 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue to protect the unique topographic characteristics of the Snowy Range Area for recreation purposes.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

The use of a right-of-way, interagency, or cooperative agreement would not adequately constrain nondiscretionary uses which could result in permanent loss of these recreational values.

There are no suitable alternative sites available. There are no other Federal lands in the area containing these recreational values.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be examined by contacting Janelle Wrigley at the above address, by calling 307–775–6257, or e-mail *Janelle_Wrigley@blm.gov.*

On or before July 25, 2011, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Wyoming State Director, Bureau of Land Management, at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail 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. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal extension. The meeting will be held on May 26, 2011, at the U.S. Forest Service, Supervisors Office, 2468 Jackson Street, Laramie, Wyoming 82070 from 6 p.m. until 9 p.m.

This withdrawal extension application will be processed in accordance with the applicable regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1.

Donald A. Simpson,

Wyoming State Director.

[FR Doc. 2011–10016 Filed 4–25–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000–FQ0000; F–025943]

Public Land Order No. 7763; Partial Revocation of Public Land Order No. 3708; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Public Land Order, as modified and extended, insofar as it affects approximately 32 acres of public land withdrawn from all forms of appropriation under the public land laws, including the mining laws, for the protection of the Gilmore Satellite Tracking Station at Gilmore Creek northeast of Fairbanks, Alaska. The land is no longer needed for the purpose for which it was withdrawn.

DATES: *Effective Date:* April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513; 907–271–4682.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration has determined that an approximately 32-acre parcel on the east boundary of the withdrawal created by Public Land Order No. 3708 is excess to its needs and requested a partial revocation of the withdrawal. Upon revocation, the State of Alaska selection applications made under the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act become effective without further action by the State, if such land is otherwise available. Lands selected by, but not conveyed to, the State are subject to the terms and conditions of Public Land Order No. 5186 (37 FR 5589 (1972)), as amended, and any other withdrawal, application, or segregation of record. Any significant restriction on subsistence uses is unavoidable because the land is required to be conveyed to the State of Alaska under Section 810(c) of the Alaska National Interest Lands Conservation Act.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3708 (30 FR 8753 (1965)), as modified by Public Land Order No. 6709 (54 FR 6919 (1989)), partially revoked by Public Land Order No. 7682 (72 FR 71940 (2007)), and extended by Public Land Order No. 7710 (73 FR 35708 (2008)), which withdrew public land from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws, is hereby revoked insofar as it affects the following described land:

Fairbanks Meridian, Alaska

T. 2 N., R. 2 E.,

Sec. 17, commencing at the Northeast corner of said NW¼ of sec. 17 marked by a Bureau of Land Management brass-capped monument and being the True Point of Beginning; Thence South 00° 10′ 51″ East, along the East line of said NW¼ a distance of 1,765.00 feet to a point; Thence North 42° 42′ 29″ West, a distance of 1,952.25 feet to a point; Thence North 00° 11′ 42″ West, 330.00 feet more or less to a point on the north boundary of said NW¼, sec. 17 to a point marked by a Bureau of Land Management brass capped monument; Thence North 89° 58′ 51″ East, along said north boundary a distance of 1,319.69 feet to the point of beginning.

The area described contains 31.73 acres, more or less, near Fairbanks.

2. The State of Alaska selection applications made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21, and under Section 906(e) of the Alaska National

Interest Lands Conservation Act, 43 U.S.C. 1635(e), become effective without further action by the State upon publication of this Public Land Order in the **Federal Register**, if such land is otherwise available. Lands selected by, but not conveyed to the State will be subject to Public Land Order No. 5186 (37 FR 5589), as amended, and any other withdrawal, application, or segregation of record.

Dated: April 15, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–10014 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW00000.L14300000.ET0000 241A; NEV–051742; 11–08807; MO#4500012855; TAS: 14X1109]

Public Land Order No. 7761; Extension of Public Land Order No. 6849; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6849, as corrected, for an additional 20-year period. The extension is necessary for continued protection of the Sheldon National Wildlife Refuge in Washoe and Humboldt Counties, Nevada.

DATES: *Effective Date:* April 22, 2011.

FOR FURTHER INFORMATION CONTACT: Pamela C. Ridley, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 1340 Financial Blvd., Reno, Nevada 89502, or 775–861–6530.

SUPPLEMENTARY INFORMATION: To maintain the purpose for which the withdrawal was first made, an extension is required for the U.S. Fish and Wildlife Service to continue to conserve and protect the sagebrush-steppe landscape for optimum populations of native plants and wildlife including pronghorn antelope, bighorn sheep, pygmy rabbits, and greater sage-grouse. The withdrawal extended by this order will expire on April 21, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6849 (56 FR 16278 (1991)), as corrected by Public Land Order No. 6907 (56 FR 57806 (1991)), 56 FR 24119 (1991), Public Land Order No. 6862 (56 FR 27692 (1991)), and 75 FR 74743 (2010), that withdrew 457,800 acres of the Sheldon National Wildlife Refuge from location under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the wildlife habitat and unique resource values, is hereby extended for an additional 20-year period until April 21, 2031.

Authority: 43 CFR 2310.4.

Dated: April 1, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2011–10012 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–CHOH–0910–5821; 3101–241A–726]

Notification of Boundary Revision

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that the boundary of the Chesapeake and Ohio Canal National Historical Park (Park) in Washington County, Maryland, is modified to include one (1) tract of land adjacent to the park. This revision is made to include privately-owned property that the National Park Service (NPS) wishes to acquire. The NPS has determined that the inclusion of this tract within the Park's boundary will make significant contributions to the purposes for which the Park was established. After the United States' acquisition of the tract, the NPS will manage the property in accordance with applicable law.

FOR FURTHER INFORMATION CONTACT: Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740 or Chief, Land Resources Program Center, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242.

DATES: The effective date of this boundary revision is the date of publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Public Law 91–664, enacted January 8, 1971, authorizes the acquisition of certain lands for the Chesapeake and Ohio Canal National Historical Park. Section 7(c) of the Land and Water Conservation Fund Act, as amended by Public Law 104–333, authorizes minor boundary revisions to areas within the National Park System. Such boundary revisions may be made, when necessary, after advising the appropriate congressional committees, and following publication of a revised boundary map, drawing or other boundary description in the **Federal Register**. In order to properly interpret and preserve the historic character of the Park, it is necessary to revise the existing boundary to include one (1) additional tract of land comprising 3.75 acres of unimproved land.

Notice is hereby given that the exterior boundary of the Park is hereby revised to include one (1) additional tract of land identified as Tract 43–124. The parcel is a portion of the same land acquired by American Legion Post 202 by deed dated June 5, 1989, and recorded in Deed Book 01012, Page 00216, in the Land Records of Washington County, Maryland, subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

This tract of land is depicted on Segment Map 43, identified as Tract 43–124, dated June 1971. The map is on file and available for inspection in the Land Resources Program Center, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: July 29, 2010.

Peggy O'Dell,

Regional Director, National Capital Region.

Editorial Note: This document was received at the Office of the Federal Register April 21, 2011.

[FR Doc. 2011–10039 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–01–20–6605; 2310–0087–422]

Wilderness Stewardship Plan/ Environmental Impact Statement, Sequoia and Kings Canyon National Parks, Tulare and Fresno Counties, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare Environmental Impact Statement for Wilderness Stewardship Plan, Sequoia and Kings Canyon National Parks.

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969 (PL91–190) Sequoia and Kings Canyon National Parks (SEKI) are initiating the conservation planning and environmental impact analysis process required to inform consideration of alternative strategies for the future management of SEKI wilderness. The Sequoia-Kings Canyon and John Krebs Wildernesses (an 808,000-acre expanse of wild High Sierra lands that were designated by the California Wilderness Act of 1984 and the Omnibus Public Land Management Act of 2009) are contained wholly within these two national parks. Through this process, SEKI will identify and analyze a range of alternatives for achieving wilderness stewardship objectives, which include providing appropriate types and levels of access for visitors and authorized users, preserving wilderness character, protecting cultural and natural resources, and adhering to legally-mandated management and preservation requirements.

This planning process represents a significant commitment by SEKI to complete a Wilderness Stewardship Plan (WSP) for these two national parks. On April 30, 1997, SEKI published a Notice of Intent to prepare an Environmental Impact Statement (EIS) in the **Federal Register** to notify the public of the intent to prepare a WSP, and had previously held seven public scoping sessions in communities throughout California between May 28 and October 5, 1996. Based on an analysis of the numerous scoping comments received, and with consideration of a variety of other factors, SEKI determined that the WSP/EIS process should be suspended and that SEKI should instead first prepare a new General Management Plan for the parks.

The General Management Plan (GMP) process was initiated in October 1997 and culminated with a Record of Decision in September 2007 (the Final EIS/General Management Plan/Comprehensive River Management Plan and associated Record of Decision are available at *http://www.nps.gov/seki/parkmgmt/gmp.htm*). The GMP provides broad, programmatic direction for wilderness management. Importantly, however, the GMP commits SEKI to preparing a tiered plan for the management of wilderness resources, and explains that this tiered plan would be an implementation level plan focused on both SEKI wilderness stewardship overall, as well as stock use within wilderness.

As an implementation level plan, the WSP will provide detailed guidance on a variety of issues including, but not limited to: Day and overnight use; wilderness permitting; use of campfires; wildlife and proper food storage; party size; camping and campsites; human waste management; stock use; meadow management; research activities; wildlife management in wilderness; cultural resources in wilderness; maintenance of trails, bridges, or other necessary infrastructure; and the "minimum requirement" for administration of the areas as Wilderness. Also to be analyzed and determined is the extent to which commercial services are necessary to fulfill the recreational and other purposes of SEKI's Congressionally designated wilderness areas. This "extent necessary" determination for commercial services will be performed to ensure compliance with § 4(d)(5) of the Wilderness Act.

The WSP will reevaluate existing wilderness-related plans and guidance, such as the 1986 Backcountry Management Plan and the 1986 Stock Use and Meadow Management Plan. The WSP will also provide for more detailed management direction on provisions of the California Wilderness Act of 1984, the Omnibus Public Land Management Act of 2009, the NPS Management Policies (2006), and current interagency policies regarding the preservation of wilderness character as they relate to wilderness within SEKI.

How to Comment: In consideration for the complexity and scope of wilderness stewardship issues in SEKI, the period during which comments will be accepted will extend for 90 days. SEKI encourages comments regarding the range of issues which should be addressed, alternative approaches to managing SEKI wilderness areas, and other concerns regarding SEKI wilderness areas or the wilderness planning process. All written comments must be transmitted, postmarked, or hand-delivered no later than July 25, 2011.

The status of the Draft EIS (DEIS) will updated periodically at *http://parkplanning.nps.gov/sekiwild*. You may request to be added to the project mailing list by mailing or faxing your request to: Superintendent Karen F. Taylor-Goodrich, Sequoia and Kings Canyon National Parks, Attn: Wilderness Stewardship Plan, 47050 Generals Highway, Three Rivers, CA 93271. So that we may plan accordingly, please note in your request whether you will prefer to receive a printed or compact disk copy of the DEIS/WSP when it is released, or just wish to receive a notice that the document is available for review on the Web site (to assist in reducing costs, the public is strongly encouraged to accept compact disks versus printed copies).

In order to ensure that information you may provide or any concerns expressed are fully considered, you may use either of two methods to respond during this scoping period. To respond electronically, you may submit your comments online to the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/sekiwild*). To submit written comments (*e.g.,* in a letter), you may send them by U.S. Postal Service or other mail delivery service, or hand deliver your comments to the address provided above. Written comments will also be accepted during public scoping meetings. Comments in any format (written or electronic) submitted by an individual or organization on behalf of another individual or organization will not be accepted. It is the practice of the NPS to make all comments available for public review, after the close of the EIS process.

Before including your address, phone number, e-mail 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.

SUPPLEMENTARY INFORMATION: At this time SEKI anticipates hosting five public scoping meetings in the San Francisco Bay Area and Los Angeles Area, and in Fresno, Visalia, and Bishop—these are expected to occur during April 25 through April 29, 2011. Confirmed details will be posted on the project Web sites. In addition, a scoping newsletter will be distributed to publicize the meeting details, and to provide a summary of issues and concerns developed through the previous scoping efforts, as well as present additional information about SEKI wilderness areas and the wilderness planning process. This newsletter will be posted on the park planning Web site (*http://www.nps.gov/seki/parkmgmt/planning.htm*) and the PEPC Web site (noted above), and sent to the SEKI mailing list.

Following due consideration for all comments obtained through this scoping effort, SEKI will prepare the DEIS/WSP. This document will state the purpose and need for Federal action, describe and analyze a range of "action" alternatives (and a "no action" baseline alternative), assess potential environmental consequences of each alternative and provide appropriate impact mitigation strategies, identify the "environmentally preferred" course of action, and explain the process and rationale for determining the "agency-preferred" alternative. The DEIS/WSP will also include an analysis of the extent to which commercial services in wilderness are necessary to realize Wilderness Act purposes. The release of the DEIS/WSP will be formally announced by publication of a Notice of Availability in the **Federal Register**, and via Web site postings and announcements in local and regional news media. Notifications will also be sent to the project mailing list, as well as to local, State, Federal, and Tribal governments.

Decision Process: Following careful analysis of all responses received concerning the DEIS/WSP, a Final EIS/WSP will be prepared and its availability similarly announced in the **Federal Register.** Thereafter, but not sooner than 30 days after release of the Final EIS/WSP, a Record of Decision would be prepared. As a delegated EIS, the official responsible for final approval of the SEKI Wilderness Stewardship Plan is the Regional Director, Pacific West Region. Subsequently the official responsible for implementation of the approved plan would be the Superintendent, Sequoia and Kings Canyon National Parks.

Dated: January 5, 2011.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2011–10042 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–X2–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–03–15–6965; 8400–0001–M7G]

Warner Valley Comprehensive Site Plan/Environmental Impact Statement, Lassen Volcanic National Park, Plumas County, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of Approval of Record of Decision for the Warner Valley Comprehensive Site Plan, Lassen Volcanic National Park.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service (NPS) has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the Warner Valley Comprehensive Site Plan (CSP) in Lassen Volcanic National Park. The requisite no-action "wait period" was initiated September 24, 2010, with the Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

Decision: As soon as practical the NPS will begin to implement the first phase of restoration work identified in the CSP, including incrementional lowering and removal of Dream Lake Dam, rehabilitation of drainage ditches in Drakesbad Meadow, and propagation of plant materials derived from local native species for use in revegetation. Other key project elements include rehabilitation or repair of compatible facilities in Drakesbad Guest Ranch historic district, and removal of non-conforming structures. Consolidation of concession housing (tent cabins) and services outside the core of the historic district will occur.

This approved CSP was identified and analyzed as the agency-preferred Alternative 2 in the Final EIS (and includes no substantive modifications from the course of action that was described in the Draft EIS). The full ranges of foreseeable environmental consequences were assessed, and appropriate mitigation measures are incorporated in the approved plan. Both a No Action alternative and an additional "action" alternative were also identified and analyzed. As documented in the Draft and Final EIS, the selected alternative was deemed to be the "environmentally preferred" course of action.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, CA 96063–0100 or via telephone request at (530) 595–4444.

Dated: March 11, 2011.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2011–10041 Filed 4–25–11; 8:45 am]

BILLING CODE 4312–GD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[5284–TT02–371]

Record of Decision

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision on the Final Environmental Impact Statement for the Tamiami Trail Modifications: Next Steps Project.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making), the NPS announces the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS) for the Tamiami Trail (U.S. Highway 41) Modifications: Next Steps Project for Everglades National Park (ENP), Florida.

DATES: The 2009 Omnibus Appropriations Act, Public Law 111–008, dated March 11, 2009, directed the U.S. Army Corps of Engineers (USACE) to construct modifications to U.S. Highway 41 (Tamiami Trail) that were approved in the 2008 Limited Reevaluation Report and Environmental Assessment. The 2009 Omnibus Appropriations Act also directed the NPS to "immediately evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries to ENP Project (16 U.S.C. 410r–8), including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail to restore more natural water flow to ENP and Florida Bay and for the purpose of restoring habitat within the ENP and the ecological connectivity between the ENP and the Water Conservation Areas." The FEIS for the Tamiami Trail Modifications: Next Steps Project provides historical information, existing conditions, alternatives for infrastructure modifications, including the preferred alternative, related impacts of the alternatives, and public involvement and consultation. The Tamiami Trail Modifications: Next Steps Project would be implemented in accordance with the preferred alternative should it be authorized and funded by the Congress.

ADDRESSES: The Record of Decision document will be available for public review online at *http://parkplanning.nps.gov/ever.* You may

request a hard copy by contacting Everglades National Park, *Attn:* Bruce Boler, 950 N. Krome Avenue, Homestead, FL 33030–6733; telephone 305–224–4234.

SUPPLEMENTARY INFORMATION: Public scoping was initiated in the summer of 2009. A newsletter was distributed on May 31, 2009, and a public meeting was held on June 2, 2009, to keep the public informed and involved throughout the planning process. As the lead agency, the NPS conducted several inter-agency/Tribal meetings and one workshop to develop project objectives, identify alternatives, evaluate the benefits of alternatives, and identify a preferred alternative. The selected alternative maximizes bridging by creating conveyance openings through Tamiami Trail by removing 5.5 miles of the existing highway and embankment. Four bridges will be constructed in the opening to replace the removed section of road and maintain vehicle traffic. Bridge down-ramp (access ramps) options were also developed to maintain access to two commercial airboat facilities: Everglades Safari Park and Coopertown. A "Modified Parallel Down Ramp" was selected as the preferred option for Everglades Safari and a "Parallel Down Ramp with Existing Frontage Road" was selected as the preferred option for Coopertown. The selected alternative will increase ecological connectivity by 5.5 miles, reduce flow velocities below the 0.10 feet per second (fps) threshold that causes harm to marshes, and substantially restore the flow patterns associated with a healthy ridge and slough landscape in Northeast Shark River Slough. In addition, the remaining highway embankments along stretches of the road that are not bridged will be reconstructed to raise the crown elevation to 12.3 feet, the minimum required based on the design high water of 9.7 feet and the roadway cross section geometry.

FOR FURTHER INFORMATION CONTACT: Everglades National Park, Attn: Bruce Boler, 950 N. Krome Avenue, Homestead, FL 33030–6733; telephone 305–224–4234.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

The responsible official for this ROD is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: April 18, 2011.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2011–10040 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–XH–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0011]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Annual Certification Report and Equitable Sharing Agreement.

The Department of Justice (DOJ), Criminal Division, Asset Forfeiture and Money Laundering Section, 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 "sixty days" until June 27, 2011. This process is conducted in accordance with 5 CFR § 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Clifford Krieger at 514–0013 or the DOJ Desk Officer at 202–395–3176.

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:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reauthorization of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Certification Report and Equitable Sharing Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N/A. Criminal Division, Asset Forfeiture and Money Laundering Section.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies that participate in the Federal Equitable Sharing Program. *Other:* None. The form is part of a voluntary program in which law enforcement agencies receive forfeited assets and proceeds to further law enforcement operations. The participating law enforcement agencies must account for their use of program funds on an annual basis and renew their contract of participation. DOJ uses this information to ensure that the funds are spent in accordance with the requirements of the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,736 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,868 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–808, Washington, DC 20530.

Dated: April 20, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–9979 Filed 4–25–11; 8:45 am]

BILLING CODE 4410–14–P

MARINE MAMMAL COMMISSION

Notice of Solicitation

AGENCY: Marine Mammal Commission.

ACTION: Notice of solicitation for nominations for potential members of the Committee of Scientific Advisors on Marine Mammals.

SUMMARY: The Marine Mammal Commission was created under Title II of the Marine Mammal Protection Act of 1972, as amended. The Commission is assisted in its duties by the Committee of Scientific Advisors on Marine Mammals. The Committee consists of nine members, appointed by the Chairman of the Commission. As a general rule, Committee members are appointed for three-year terms, which may be extended as necessary, but vacancies do not occur on a regularly scheduled basis. To assist the Commission in identifying qualified candidates for appointment to the Committee if and when vacancies occur, the Commission is soliciting nominations from the public.

DATES: Nominations for this solicitation should be received by May 23, 2011. Nominations also will be accepted at other times on an on-going basis.

ADDRESSES: Catherine M. Jones, Administrative Officer, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814. Nominations (Word, PDF, in text of e-mail) may be sent via e-mail to *cjones@mmc.gov.* Nominations should include a brief statement of the nominee's qualifications and should include a copy of the nominee's curriculum vitae. Self-nominations are acceptable.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ragen, Ph.D., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814; (301) 504–0087.

SUPPLEMENTARY INFORMATION: Section 203 of the Marine Mammal Protection Act directs the Commission to establish a nine-member Committee of Scientific Advisors on Marine Mammals. The Committee is to consist of scientists knowledgeable in marine ecology and marine mammal affairs. Members are appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences. The Commission is required to consult with the Committee on all studies and recommendations that it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of the Act, and on all applications for permits for scientific research.

In selecting individuals to serve on the Committee, the Commission seeks to ensure that the Committee membership as a whole possesses a high level of expertise with respect to scientific disciplines, marine mammal species, and geographic areas of importance to the Commission's responsibilities. In particular, the Commission requires a high level of knowledge with respect to the biology and ecology of certain marine mammal species that, due to their small population levels and/or threats they face, require special attention. These include, but are not limited to, the West Indian manatee, the right whale and other species of large whales, the vaquita, sea otters, the Cook Inlet stock of beluga whales, the polar bear, and the Hawaiian monk seal. In addition, Committee members are selected to provide broad familiarity with marine mammal species and issues from a range of geographic regions where Commission responsibilities are especially great.

A listing of the current members of the Committee is available on the Commission's Web site at *http://www.mmc.gov.*

Dated: April 18, 2011.

Timothy J. Ragen,

Executive Director.

[FR Doc. 2011–9981 Filed 4–25–11; 8:45 am]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–043)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting; correction.

Federal Register Citation of Previous Announcement: 76 FR 19147, Notice Number 11–030, April 6, 2011.

SUMMARY: The National Aeronautics and Space Administration published a document in the **Federal Register** of April 6, 2011, announcing a meeting of the Aerospace Safety Advisory Panel (ASAP) to take place on April 29, 2011, at the Kennedy Space Center, FL. Due to the STS–134 Space Shuttle launch now set for April 29, 2011 at the Kennedy Space Center, the ASAP public meeting has a new date and location.

Correction: Date and time of ASAP public meeting is now Tuesday, May 24, 2011, 11 a.m. to 1 p.m. at the Cape Canaveral Public Library, Public Meeting Room, 201 Polk Avenue, Cape Canaveral, FL 32920.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, ASAP Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

Dated: April 21, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–10114 Filed 4–25–11; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–113; NRC–2009–0549]

Notice of Issuance of License Amendment Regarding Decommission Plan Approval; University of Arizona Research Reactor

The U.S. Nuclear Regulatory Commission (NRC) has issued the approval of the University of Arizona decommissioning plan (DP) by amendment to the Facility License R–52 for the University of Arizona Research Reactor (UARR). The UARR is located within the University of Arizona Nuclear Reactor Laboratory (NRL) on the 325-acre campus of the University of Arizona in Pima County, Arizona in the city of Tucson. The reactor was licensed for a steady state power of 110 kW (thermal), with a pulsing capability up to peak powers of approximately 650 MW. The reactor ceased operations on May 18, 2010. The UARR is a TRIGA pool-type reactor designed and constructed by General Atomic Division of General Dynamics Corporation (now GA Technologies of San Diego, California). TRIGA stands for Test, Research, Isotope production, General Atomics. The licensee submitted the UARR DP to the NRC in a letter dated May 21, 2009, as supplemented on March 26, 2010.

A document titled, "Notice and Solicitation of Comments Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Arizona Research Reactor," was published in the **Federal Register** on December 14, 2009 (74 FR 66173–66174). No comments were received following the notice.

The NRC staff prepared a safety evaluation report approving the University of Arizona's proposed decommissioning plan. Based on the NRC staff's review of the licensee's application for approval of decommissioning, the NRC staff finds that the proposed DP meets the requirements of 10 CFR 50.82(b)(4).

For details with respect to the licensee's application, see the licensee's letter dated May 21, 2009 (ML100620926, ML091490076), as supplemented by letter dated March 26, 2010 (ML100920089). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of April 2011.

For the Nuclear Regulatory Commission.

Jessie F. Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10084 Filed 4–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 12–14, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (75 FR 65038–65039).

Thursday, May 12, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

1:30 p.m.–1:35 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:35 p.m.–3 p.m.: Final Safety Evaluation Report Associated with the License Renewal Application for the Hope Creek Generating Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and PSEG Nuclear, LLC regarding the final safety evaluation report (SER) associated with the license renewal application for the Hope Creek Generating Station.

3:15 p.m.–5:15 p.m.: Final Safety Evaluation Report Associated with the License Renewal Application for Salem Nuclear Generating Station, Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and PSEG Nuclear, LLC regarding the final SER associated with the license renewal application for Salem Nuclear Generating Station, Units 1 and 2.

5:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss proposed ACRS reports on a response to the February 5, 2011, Executive Director for Operations (EDO) letter on the final SER associated with the AP1000 Design Control Document; a response to the March 1, 2011, EDO letter on the draft final rule, "Enhancements to Emergency Preparedness," and related regulatory guidance documents; and human factors considerations in emerging technologies.

Friday, May 13, 2011, Conference Room T–2B1, 11545 Rockville Pike, Rockville, MD

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Advanced Reactor Research Plan (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Advanced Reactor Research Plan. [**Note:** A portion of this session may be closed in order to discuss and protect information that is proprietary pursuant to 5 U.S.C 552b(c)(4)]

10:45 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

12:15 p.m.–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC EDO to comments and recommendations included in recent ACRS reports and letters.

2 p.m.–3:30 p.m.: Preparation for Meeting with the Commission (Open)—The Committee will discuss topics for the meeting with the Commission on June 6, 2011.

3:45 p.m.–2:15 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information that is proprietary pursuant to 5 U.S.C 552b(c)(4).]

Saturday, May 14, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary by Westinghouse and its contractors pursuant to 5 U.S.C 552b(c)(4).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry.

Persons desiring to make oral statements should notify Ms. Ilka Berrios, Cognizant ACRS Staff (*Telephone:* 301–415–3179, *E-mail: Ilka.Berrios@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (Telephone 301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: April 20, 2011.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–10086 Filed 4–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 25, May 2, 9, 16, 23, 30, June 6, 13, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 25, 2011

Thursday, April 28, 2011

9:30 a.m. Briefing on the Status of NRC Response to Events in Japan and Briefing on Station Blackout (Public Meeting); (*Contact:* George Wilson, 301–415–1711)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of May 2, 2011—Tentative

Tuesday, May 3, 2011

9 a.m. Information Briefing on Emergency Preparedness (Public Meeting); (*Contact:* Robert Kahler, 301–415–7528)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 9, 2011—Tentative

Thursday, May 12, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan (Public Meeting); (*Contact:* Nathan Sanfilippo, 301–415–3951)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 16, 2011—Tentative

There are no meetings scheduled for the week of May 16, 2011.

Week of May 23, 2011—Tentative

Friday, May 27, 2011

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting); (*Contact:* Rani Franovich, 301–415–1868)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 30, 2011—Tentative

Thursday, June 2, 2011

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting); (*Contact:* Susan Salter, 301–492–2206)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting); (*Contact:* Tanny Santos, 301–415–7270)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Thursday, June 16, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting); (*Contact:* Nathan Sanfilippo, 301–415–3951)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*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 Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@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 e-mail to *darlene.wright@nrc.gov.*

Dated: April 21, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–10178 Filed 4–22–11; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29655; File No. 812–13669]

Russell Investment Management Company, *et al.;* Notice of Application

April 20, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Russell Investment Management Company ("RIMCo"), Russell Exchange Traded Funds Trust ("Trust", formerly U.S. One Trust), Russell Financial Services, Inc. ("RFS") and ALPS Distributors, Inc. ("ALPS").

FILING DATES: The application was filed on July 2, 2009, and amended on August 31, 2009, January 22, 2010, November 15, 2010, March 16, 2011, April 14, 2011, and April 20, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 13, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1301 Second Avenue, 18th Floor, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel at (202) 551–6915, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trust is organized as a Delaware statutory trust and is registered as an open-end management investment company under the Act. The Trust initially will offer series described in Exhibit C to the application ("Initial Funds") whose performance will correspond generally to the total return of a specified index consisting solely of equity and/or fixed income securities ("Underlying Index" or "Index").

2. Applicants request that the order apply to the Initial Funds and any additional series of the Trust and any other open-end management investment companies or series thereof, that may be created in the future and that track a specified equity and/or fixed income securities Underlying Index ("Future Funds").[1] Any Future Fund will be (a) advised by RIMCo or an entity controlling, controlled by, or under common control with RIMCo ("Adviser"), and (b) comply with the terms and conditions of the application. The Initial Funds and Future Funds, together, are the "Funds".[2]

3. RIMCo is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), and will serve as investment adviser to the Initial Funds. Any investment adviser to Future Funds will be registered as an investment adviser under the Advisers Act. The Adviser is a wholly-owned subsidiary of Frank Russell Company d/b/a Russell Investments ("Russell" or the "Index Provider") who may provide the Underlying Indexes for certain Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a "Sub-Adviser"). Each Sub-Adviser will be registered under the Advisers Act. RFS, a Washington corporation and a wholly-owned subsidiary of the Adviser, is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"). ALPS, a Colorado corporation, is a broker-dealer registered under the Exchange Act. ALPS is not affiliated with RIMCo or its affiliates. RFS or ALPS will serve as the principal underwriter and distributor of the Funds (the "Distributor").

4. Each Fund will hold certain equity securities and/or fixed income securities ("Portfolio Securities") selected to correspond generally to the performance of a specified equity and/or fixed income Underlying Index. Each Initial Fund will track an Underlying Index of selected equity securities. The Funds may invest in equity securities ("Equity Funds") and/or fixed income securities ("Fixed Income Funds") traded in the U.S. or non-U.S. markets as well as futures contracts, options on such futures contracts, swaps, forward contracts or other derivatives, shares of other exchange-traded funds and investment companies that invest primarily in short-term fixed income securities. Certain of the Underlying Indexes will be comprised solely of equity and/or fixed income securities of domestic issuers and non-domestic issuers meeting the requirements for

[1] All entities that currently intend to rely on the order have been named as applicants. Any other entity that subsequently relies on the order will comply with the terms and conditions of the application. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and Actively-Managed Funds (as defined below) and not in any other registered investment company.

[2] Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009) before offering Shares.

trading in U.S. markets ("Domestic Indexes"). Other Underlying Indexes will be comprised solely of foreign equity and/or fixed income securities or a combination of domestic and foreign equity and/or fixed income securities ("Foreign Indexes"). Funds that track Domestic Indexes are referred to as "Domestic Funds" and Funds that track Foreign Indexes are referred to as "Foreign Funds." The Underlying Indexes are based on a proprietary, rules based methodology developed by Russell ("Index Composition Methodology"). The Index Composition Methodology, including the rules which govern the inclusion and weighting of securities in the Underlying Indexes, will be publicly available, including on Russell's website ("Web site"). All components, weightings, additions and deletions from the Underlying Indexes will not only be publicly available, but will also be publicly announced prior to any changes being made. While the Index Provider may modify the Index Composition Methodology in the future, it does not currently intend to do so. Any change to the Index Composition Methodology would not take effect until the Index Provider had given the public at least 60 days advance notice of the change and had given reasonable notice of the change to the Calculation Agent. The "Calculation Agent" is the entity that, pursuant to an agreement with Russell, is solely responsible for all Index maintenance, calculation, dissemination and reconstitution activities.[3] The Calculation Agent is not, and will not be, an affiliated person, or an affiliated person of an affiliated person, of the Funds, the Adviser, any Sub-Adviser, the Distributor or any promoter of the Funds. The Indexes will be reconstituted on a periodic basis at least annually and no more frequently than monthly.

5. Applicants state that the Index Personnel will not have any responsibility for the management of the Funds. In addition, applicants have adopted policies and procedures ("Firewalls") that, among other things, are designed to prevent the Adviser, or any affiliated person of the Adviser of a Fund, from having any advantage over other market participants with respect to prior knowledge of companies that may be added to or deleted from the Index or from the portfolios of any Funds that track the Underlying Indexes. Among other things, the Firewalls prohibit anyone, including the Index Personnel from disseminating non-public information about the Indexes, including potential changes to the Index Composition Methodology, to, among others, the employees of the Adviser and any Sub-Adviser responsible for managing the Funds or any Client Account (as defined below). A Client Account is any account, including any open-end registered investment company, separately managed account for institutional investors, privately offered fund that is not deemed to be an investment company in reliance on section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act, or business development company that is a client of the Sub-Adviser. The Index Provider, the Adviser and any Sub-Adviser have or will have adopted policies, including Firewalls that prohibit personnel responsible for the management of the Funds and/or any Client Accounts from sharing any non-public information about the management of the Funds and any Client Account with the Index Personnel and Calculation Agent. Further, the Adviser and any Sub-Adviser have adopted and implemented, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. The Adviser, any Sub-Adviser and Distributor also have adopted or will adopt a Code of Ethics as required under rule 17j–1 under the Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1. In addition, the Adviser and any Sub-Adviser has adopted or will adopt policies and procedures to detect and prevent insider trading as required under section 204A of the Advisers Act, which are reasonably designed taking into account the nature of their business, to prevent the misuse in violation of the Advisers Act, Exchange Act, or rules and regulations under the Advisers Act and Exchange Act, of material non-public information.

6. Applicants assert that certain potential conflicts of interest discussed in the application do not exist where the index creator is not an affiliated person, or an affiliated person of an affiliated person, of an exchange-traded fund or its investment adviser or any sub-adviser. Applicants assert that the representations and undertakings designed to prevent such potential conflicts of interest that relate to the transparency of the methodology for those Underlying Indexes, and the establishment of certain policies and procedures to limit communication between Index Personnel and employees of the Adviser and any Sub-Adviser shall not apply to an "Unaffiliated Index Fund".[4]

7. The investment objective of each Fund will be to provide investment results that closely correspond to the total return of its Underlying Index.[5] The value of the Underlying Index will be disseminated once each "Business Day," which is defined as any day that a Fund is required to be open under section 22(e) of the Act, at the end of the Business Day. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will attempt to match the risk and return characteristics of a Fund's

[3] The Calculation Agent will determine the number, type and weight of securities that comprise each Index and will perform or cause to be performed all other calculations that are necessary to determine the proper make-up of each Index. The Calculation Agent will not disclose any information concerning the identity of companies that meet the selection criteria to the Adviser, any Sub-Adviser, the Funds or any other affiliated entities prior to the publication of such information on the Web site. Certain employees of the Index Provider and its affiliates who have responsibility for the Underlying Indexes and Index Composition Methodology, as well as those employees of the Index Provider and its affiliates appointed to assist such employees in the performance of their duties ("Index Personnel") will monitor the results produced by the Calculation Agent on a periodic basis.

[4] An "Unaffiliated Index Fund" refers to an open-end management investment company for which the Adviser serves as investment adviser, which will operate, function and trade as an exchange-traded fund in substantially the same manner as the Initial Funds, and where no entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Fund, the Adviser, the Distributor, promoter or any Sub-Adviser to a Fund.

[5] Applicants represent that each Fund will invest at least 80% of its assets (exclusive of collateral held from securities lending) in the component securities that comprise its Underlying Index ("Component Securities") or, in the case of Fixed Income Funds, in the Component Securities of its respective Underlying Index and TBAs (as defined below) representing Component Securities, and in the case of Foreign Funds, in Component Securities and Depositary Receipts representing such Component Securities. Depositary receipts include American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"). A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of Applicants will serve as the depositary for any Depositary Receipts held by a Fund. Each Fund also may invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash, cash equivalents, other investment companies, and securities that are not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index.

portfolio to the risk and return characteristics of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5%.

8. Creation Units are expected to consist of 50,000 Shares and to have an initial price in the range of $1,000,000 to $30,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC", and such participant, "DTC Participant"). Shares of the Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser to correspond generally to the total return of the relevant Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment ("Balancing Amount" and collectively with the Deposit Securities, "Portfolio Deposit"). The Balancing Amount is an amount equal to the difference between (a) the net asset value ("NAV") (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.[6] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities if the method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency. To preserve maximum efficiency and flexibility, a Fund reserves the right to accept and deliver Creation Units on a cash basis.

9. An investor acquiring or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[7] The Distributor also will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

10. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). Exchange specialists also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[8] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for redemptions ("Redemption Securities") on the date that the request for redemption is submitted and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Redemption Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is restrained from effecting transactions in the security by regulation or policy.[9] A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

13. Applicants state that in accepting Deposit Securities and satisfying redemptions with Redemption Securities, the relevant Funds will comply with the federal securities laws, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act").[10] The specified Deposit Securities and Redemption Securities either (a) will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Redemption Securities (i) consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (ii) consist only of securities that are already included among the existing Portfolio Securities, and (iii) are

[6] Each Fund will sell and redeem Creation Units only on a Business Day. The Fund will make available on each Business Day, prior to the opening of trading on the listing Exchange, a list of the names and the required number of shares of each Deposit Security to be included in the Portfolio Deposit for each Fund. Any national securities exchange (as defined in section 2(a)(26) of the Act) ("Exchange") on which Shares are listed will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[7] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[9] Applicants state that a cash-in-lieu amount will replace any "to-be-announced" ("TBA") transaction that is listed as a Deposit Security or Redemption Security of any Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or a Redemption Security.

[10] In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A.

the same for all Authorized Participants on a given Business Day.[11]

14. Neither the Trust nor any individual Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "ETF," an "investment company," a "fund," or a "trust." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The same approach will be followed in investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles present in local markets for the foreign securities in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where

[11] In either case, a basket of Deposit Securities and a basket of Redemption Securities (and a true pro rata slice of the Portfolio Securities) may differ solely to the extent necessary (a) because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, (b) because, in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots, or (c) for temporary periods, to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index. A tradeable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[12] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within the number of days indicated above up to a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the Statement of Additional Information ("SAI") will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days, up to a maximum of 14 calendar days, needed to deliver the proceeds for each affected Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies ("Investing Management Companies") and unit investment trusts ("Investing Trusts") registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds or Actively-Managed Funds [13] (collectively, "Fund of Funds") to acquire Shares or shares of an Actively-Managed Fund beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit a Fund or Actively-Managed Fund and any principal underwriter for the Fund or Actively-Managed Fund, and any broker-dealer that is registered under the Exchange Act ("Broker") to sell Shares or shares, respectively, to Fund of Funds in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Fund of Funds Adviser") and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Fund of Funds Sub-Adviser"). Any investment adviser to a Fund of Funds will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Funds or Actively-Managed Funds.[14] To limit the control that a Funds of Funds may have over a Fund or Actively-Managed Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor ("Fund of Funds' Advisory Group") from controlling (individually or in the aggregate) a Fund or Actively-Managed Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds' Sub-Advisory Group"). Applicants propose other conditions to limit the potential for undue influence over the Funds or Actively-Managed Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund or Actively-Managed Fund) will cause a Fund or Actively-Managed Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, or employee is an affiliated person (except that any person whose relationship to the Fund or Actively-Managed Fund is covered by

[12] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade.

[13] The term "Actively-Managed Funds" as used in the application refers to exchange-traded funds that utilize active management investment strategies, are advised by an Adviser and in the same "group of investment companies" within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Funds.

[14] A "Fund of Funds Affiliate" is any Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, or principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is the investment adviser, promoter, or principal underwriter of a Fund or Actively-Managed Fund and any person controlling, controlled by or under common control with any of those entities.

section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund or Actively-Managed Fund in which the Investing Management Company may invest. In addition, except as provided in condition B.6, a Fund of Funds Adviser or a trustee ("Trustee") or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund or Actively-Managed Fund under rule 12b–1 under the Act) received by the Fund of Funds Adviser, Trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, Trustee or Sponsor, from a Fund or Actively-Managed Fund in connection with the investment by the Fund of Funds in the Fund or Actively-Managed Fund. Applicants state that any sales charges or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[15]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund or Actively-Managed Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund or Actively-Managed Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure that Funds of Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Fund of Funds that intends to invest in a Fund or Actively-Managed Fund in reliance on the requested order will enter into an agreement ("FOF Participation Agreement") between the Fund or Actively-Managed Fund and the Fund of Funds requiring the Fund of Funds to adhere to the terms and conditions of the requested order. The FOF Participation Agreement also will include an acknowledgement from the Fund of Funds that it may rely on the requested order only to invest in a Fund or an Actively-Managed Fund and not in any other investment company.

16. Applicants also note that a Fund or an Actively-Managed Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares or shares of an Actively-Managed Fund in the secondary market, a Fund or Actively-Managed Fund would still retain its ability to reject initial purchases of Shares or shares, as the case may be, made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("Second-Tier Affiliate"), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an "Affiliated Fund").

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through "in-kind" transactions. The deposit procedures for both in kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as Portfolio Securities. Portfolio Securities, Deposit Securities, Redemption Securities, and Cash Redemption Payments (except for any permitted cash-in-lieu amounts) will be the same regardless of the identity of the purchaser or redeemer, except for the previously mentioned temporary periods where the Redemption and Creation Units differ to reflect changes in the Underlying Index. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund or Actively-Managed Fund that is an affiliated person, or affiliated person of an affiliated person of a Fund of Funds to sell its Shares, or shares in the case of an Actively-Managed Fund, to and redeem its Shares, or shares, from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[16] Applicants state that the terms of the transactions are fair and reasonable and do not involve

[15] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by FINRA.

[16] To the extent that purchases and sales of Shares of a Fund occur in the secondary market (and not through principal transactions directly between a Fund of Funds and a Fund or Actively-Managed Fund), relief from section 17(a) would not be necessary. However, the requested relief would apply to in-kind transactions directly between Funds or Actively-Managed Funds and Funds of Funds. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund or Actively-Managed Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the Fund or Actively-Managed Fund is also an investment adviser to the Fund of Funds.

overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund, or of shares directly from an Actively-Managed Fund, will be based on the NAV of the Fund or Actively-Managed Fund.[17] Applicants believe that any proposed transactions directly between the Funds or Actively-Managed Funds and Fund of Funds will be consistent with the policies of each Fund of Funds. Any investment by a Fund of Funds in Shares of Funds or shares of Actively-Managed Funds will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Fund's registration statement. The FOF Participation Agreement will require any Fund of Funds that purchases Creation Units directly from a Fund or Actively-Managed Fund to represent that the purchase of Creation Units from a Fund or Actively-Managed Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Fund's registration statement.

Applicants' Conditions:

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Exchange Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

2. No Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for each Fund, which is and will be publicly accessible at no charge, will contain the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price in relation to the NAV, on a per Share basis, for each Fund.

4. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange traded funds.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) any Fund or Actively-Managed Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) any Fund or Actively-Managed Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund or Actively-Managed Fund, a Fund of Funds' Advisory Group or a Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund or Actively-Managed Fund, it will vote its Shares of the Fund or Actively-Managed Fund, as the case may be, in the same proportion as the vote of all other holders of such shares. This condition does not apply to a Fund of Funds' Sub-Advisory Group with respect to a Fund or Actively-Managed Fund for which the Fund of Funds Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund or an Actively-Managed Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund or its Fund Affiliate or the Actively-Managed Fund or its Fund Affiliate, as the case may be.

3. The board of directors or trustees of an Investing Management Company, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and any Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or its Fund Affiliate or an Actively-Managed Fund or its Fund Affiliate, as the case may be, in connection with any services or transactions.

4. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund or an Actively-Managed Fund) will cause a Fund or an Actively-Managed Fund to purchase a security in an Affiliated Underwriting.

5. Before investing in a Fund or an Actively-Managed Fund in excess of the limits in section 12(d)(1)(A), the Fund of Funds and the Fund or Actively-Managed Fund, as the case may be, will execute a FOF Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund or shares of an Actively-Managed Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund or the Actively-Managed Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund or the Actively-Managed Fund, as the case may be, a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund or the Actively-Managed Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund or the Actively-Managed Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

6. The Fund of Funds Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund or an Actively-Managed Fund under rule 12b–1 under the Act) received from a Fund or an Actively-Managed Fund by the Fund of Funds Adviser, Trustee or Sponsor, or an affiliated person of the Fund of Funds Adviser, Trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, Trustee or Sponsor, or its affiliated person by the Fund or the Actively-Managed Fund, in connection with the investment by the Fund of Funds in the Fund or Actively-Managed Fund. Any Fund of Funds

[17] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares or shares of an Actively-Managed Fund, or (b) an affiliated person of a Fund or an Actively-Managed Fund, or an affiliated person of such person, for the sale by the Fund of its Shares, or Actively-Managed Fund of its shares, to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund or an Actively-Managed Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund or the Actively-Managed Fund, as the case may be, in connection with the investment by the Investing Management Company in the Fund or Actively-Managed Fund, as the case may be, made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

7. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

8. Once an investment by a Fund of Funds in the securities of a Fund or an Actively-Managed Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Fund or Actively-Managed Fund ("Board"), including a majority of directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund or the Actively-Managed Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund or the Actively-Managed Fund; (ii) is within the range of consideration that the Fund or the Actively-Managed Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund or an Actively-Managed Fund, as the case may be, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

9. The Board of a Fund and of an Actively-Managed Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund or the Actively-Managed Fund, as the case may be, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund or the Actively-Managed Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund or the Actively-Managed Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund or the Actively-Managed Fund, as the case may be; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund or the Actively-Managed Fund, as the case may be, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

10. Each Fund and each Actively-Managed Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund or the Actively-Managed Fund, as the case may be, exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

11. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the non-interested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund or any Actively-Managed Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

12. No Fund or Actively-Managed Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund or Actively-Managed Fund, as the case may be, to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9968 Filed 4–25–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64311; File No. SR–NASDAQ–2011–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Expire Time

April 20, 2011.

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 April 14, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market ("NOM") to amend Chapter VI, Trading Systems, Section 1, Definitions, and Section 6, Acceptance of Quotes and Orders, to eliminate the "Time in Force" designation called "Expire Time."

This change is scheduled to be implemented on NOM on or about August 1, 2011; the Exchange will announce the implementation schedule by Options Trader Alert, once the rollout schedule is finalized.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Expire Time. Currently, Chapter VI, Section 1(g) provides that the term "Time in Force" means the period of time that the System will hold an order for potential execution. Time in force conditions, which are listed in subsections 1(g)(1)—(5), include Expire Time, Immediate or Cancel, Good-till-Cancelled and WAIT. At this time, "Expire Time" (or "EXPR") is being eliminated. Expire Time means that, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant unless canceled by the entering party. EXPR Orders are currently available for entry from the time prior to market open specified by the Exchange on its Web site until market close Eastern Time and for execution from 9:30 a.m. until market close. Chapter VI, Section 6, Acceptance of Quotes and Orders, also currently refers to Expire Time in subsection (a)(1), which is also proposed to be amended to eliminate the reference to Expire Time.

The Exchange proposes to eliminate Expire Time, as part of some technological changes to NOM's trading system intended to enhance the system as a whole. The Exchange has determined not to incorporate this functionality into its enhanced trading system, because the same result can be achieved by Participants cancelling their orders directly. Also, the Exchange believes that this proposed rule change as well as other notification to Participants will serve to notify Participants of this change. The other Time in Force conditions will continue to be available.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal is appropriate and reasonable, because, although it eliminates a time in force condition, this functionality is not required under the Act; the Exchange has determined to eliminate it and believes that this should have no detrimental effect, because it is not widely used.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) [6] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–052. This file number should be included on the subject line if e-mail 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

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–052 and should be submitted on or before May 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9970 Filed 4–25–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64312; File No. SR–NASDAQ–2011–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Order Price Protection Feature

April 20, 2011.

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 April 14, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market ("NOM") to amend Chapter VI, Trading Systems, to adopt new Section 18, Order Price Protection.

This change is scheduled to be implemented on NOM on or about August 1, 2011; the Exchange will announce the implementation schedule by Options Trader Alert, once the rollout schedule is finalized.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to address risks to market participants of human error in entering orders at unintended prices. To that end, the Exchange has developed a program known as Order Price Protection ("OPP"), which would prevent certain orders from executing or being placed on the book at prices outside pre-set standard limits. The System would reject such orders rather than executing them automatically. The operation of the OPP, which is very similar to PHLX Rule 1080.07, would be set forth in new Section 18 of Chapter VI.

The OPP feature would prevent certain day limit, good til cancelled or immediate or cancel orders at prices outside of certain pre-set limits from being accepted by the System. OPP would apply to all options, but would not apply to market orders or Intermarket Sweep Orders. OPP would be operational each trading day after the opening until the close of trading, except during trading halts. The Exchange would also be able to temporarily deactivate OPP from time to time on an intraday basis at its discretion if it determined that volatility warranted deactivation. Participants would be notified of intraday OPP deactivation due to volatility and any subsequent intraday reactivation by the Exchange through the issuance of system status messages.

The OPP will help Participants control risk by checking each order, before it is accepted into the System, against certain parameters established by new Chapter VI, Section 18. It would compare price instructions on the order against the current contraside National Best Bid Offer ("NBBO"),[3] and would automatically reject the order if it is priced outside the range established in Section 18.

The range of permissible orders depends on whether the contra-side of an incoming order is greater than $1.00, or equal to or less than $1.00. If the NBBO on the contra-side of an incoming order were greater than $1.00, orders with a limit more than 50% through such contra-side NBBO would be rejected by the System upon receipt. For example, if the NBBO on the offer side were $1.10, an order to buy options for more than $1.65 would be rejected. Similarly, if the NBBO on the bid side were $1.10, an order to sell options for less than $0.55 would be rejected.

If the NBBO on the contra-side of an incoming order were less than or equal to $1.00, orders with a limit more than 100% through such contra-side NBBO would be rejected by the System upon receipt. For example, if the NBBO on the offer side were $1.00, an order to buy options for more than $2.00 would be rejected. However, if the NBBO of the bid side of an incoming order to sell were less than or equal to $1.00, the OPP limits set forth above would result in all incoming sell orders being accepted regardless of their limit.

Like the PHLX's OPP, NOM's will be available for Participants' orders, but not for market making.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Chapter I, Section 1(a)(33).

[4] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by mitigating risks to market participants of human error in entering orders at clearly unintended prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–053. This file number should be included on the subject line if e-mail 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 website 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–053 and should be submitted on or before May 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–9971 Filed 4–25–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7400]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 9 a.m. to 11 a.m. on May 12, 2011, in Conference Room 1107 of the State Department's Harry S Truman building at 2201 C Street, NW.

The Commission will hear an update on the "strategic framework" on public diplomacy released in March 2010 and discuss whether U.S. Public diplomacy is striking the right balance when engaging youth, elite, online or offline audiences. The Commission welcomes commentary from the public on these and other topics relevant to its mission.

This meeting is open to the public, the State Department, Defense Department, Congress, and other organizations. Seating is limited. To attend or request further information, contact the Commission at (202) 203–7463 or *pdcommission@state.gov* by 5 p.m. on May 9, 2011. Please arrive for the meeting by 8:45 a.m.

As access to the Department of State is controlled, members of the public wishing to attend the meeting must notify the Commission, no later than 5 p.m., May 9, 2011, providing the information below. If notified after this date, the Department's Bureau of Diplomatic Security may not be able to complete the necessary processing required to attend the meeting. Any person requesting reasonable accommodation should notify the Commission by the same date.

Each member of the public wishing to attend the meeting should provide: his/her name, company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the Commission. A RSVP list will be provided to Diplomatic Security. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, passport, U.S. Government ID or other valid photo ID. Personal data is requested pursuant

[8] 17 CFR 200.30–3(a)(12).

to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. *Please see* the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

The U.S. Advisory Commission on Public Diplomacy is charged with appraising U.S. Government activities intended to understand, inform, and influence foreign publics and submitting reports on the same to the President, the Secretary of State, and the Congress. The Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director.

The members of the Commission are: William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Jay Snyder of New York; Ambassador Penne Korth-Peacock of Texas; John Osborn of Pennsylvania; and Lezlee Westine of Virginia. The seventh seat on the Commission is currently vacant.

The following individuals are nominated to the Commission but await Senate confirmation as of this writing: Ambassador Ryan Crocker of Texas, Sim Farar of California, and Anne Wedner of Illinois.

The Commission is a bipartisan panel established under Section 604 of the United States Information and Educational Exchange Act of 1948, commonly known as the Smith-Mundt Act, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. The U.S. Advisory Commission on Public Diplomacy is authorized by Public Law 101–246 (2009), 22 U.S.C. 6553, and has been further authorized through September 20, 2011.

Dated: April 18, 2011.

Matthew C. Armstrong,

Executive Director, Department of State.

[FR Doc. 2011–10074 Filed 4–25–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Meeting: U.S. Registration of Aircraft in the Name of Owner Trustees

AGENCY: Federal Aviation Administration.

ACTION: Notice of public meeting.

SUMMARY: The FAA will be holding a public meeting on Wednesday, June 1, 2011, on the U.S. registration of aircraft in the name of owner trustees. The FAA is seeking the views from the public with respect to the use of owner trusts to register aircraft for the benefit of beneficiaries that are neither U.S. citizens nor resident aliens.

DATES: The meeting will be held on Wednesday, June 1, 2011, beginning at 9 a.m. Central Time and ending no later than 5 p.m. Central Time.

ADDRESSES: The meeting will be held at the Marriott Renaissance Convention Center Hotel, 10 North Broadway Avenue, Oklahoma City, OK 73102, Phone 405–228–8000 or 1–800–468–3571.

FOR FURTHER INFORMATION CONTACT: LaDeana Peden at 405–954–3296, Office of Aeronautical Center Counsel, Federal Aviation Administration. [Assistance for the hearing impaired is available through the Sign Language Resource Service (SLRS), Inc. at: 1–888–842–9460 or 405–721–0800 or *http://www.SLRSinc.com.*]

SUPPLEMENTARY INFORMATION: During the first part of the meeting, FAA will review the provisions of 49 U.S.C. 44102 and 14 CFR 47.7(c) and identify the issues that are relevant to compliance with those statutory and regulatory requirements in the context of trusts with foreign beneficiaries. The second part of the meeting will provide an opportunity for attendees to provide their views to the FAA regarding the appropriate application of the statute and regulations in this context and, in particular, to answer the specific questions set forth below. At some later time, after considering comments made during the meeting, FAA will notify the public about any further action it contemplates taking.

Background: The Federal Aviation Administration has a history of registering U.S. civil aircraft to trustees, some of which have beneficiaries that are neither U.S. citizens nor resident aliens. Title 49 U.S.C. 44102 describes the conditions under which an aircraft may be registered on the U.S. Civil Aircraft Registry under 49 U.S.C. 44103: the aircraft may not be registered under the laws of a foreign country and must be owned by a citizen of the United States (*See* 49 U.S.C. 40102), a foreign citizen lawfully admitted for permanent residence in the United States, or a foreign corporation that is organized and doing business under the laws of the United States or a State and the aircraft is based and primarily used in the United States. In addition, 14 CFR 47.7 makes special provision for trustees to register aircraft and, when any beneficiary of the trust is not a U.S. citizen or a resident alien, imposes additional requirements and limitations with respect to the power of such beneficiaries to influence or limit the exercise of the trustee's authority or to direct or remove a trustee. In addition, the Federal Aviation Regulations impose particular obligations on the owners (and not just the pilots in command and operators) of aircraft (*See* 14 CFR 91.403(a)).

The FAA has issued several interpretations of its regulations as they apply to the relationship and permissible interactions between a trustee and beneficiaries that are not U.S. citizens or resident aliens, two of which have held that "there can be no other relationship between the trustee and beneficiaries other than that created by the trust. For example, there cannot be a lessor/lessee or bailor/bailee relationship." (Interpretation 1981–56; similarly: Interpretation 1982–6).

In order to clarify the appropriate interpretation and application of the statutes and FAA regulations in connection with the U.S. registration of aircraft to owner trusts with beneficiaries that are neither U.S. citizens nor resident aliens, the FAA seeks a discussion with interested members of the public. In order to have a robust and productive discussion with members of the public, the FAA presents the following questions and scenarios in order to highlight some of the salient issues around which it desires discussion.

Trust Registration Questions: At this meeting, the FAA is seeking the views from the public on the appropriate structures for using a trust to register an aircraft for the benefit of a beneficiary that is not a U.S. citizen or resident alien. The FAA would like to hear from members of the public on how a trust can be structured and implemented for purposes of aircraft registrations that satisfy statutory and regulatory requirements regarding ownership and U.S. citizenship. Simply expressed, which practices and contractual provisions must exist, and which practices and contractual provisions must be prohibited, in order to satisfy

the statutory and regulatory requirements.

In order to clarify the appropriate interpretation and application of statutory provisions, FAA regulations and FAA policy in connection with U.S. registration of aircraft to owner trustees, the FAA seeks a discussion with interested members of the public about the factors that would weigh in favor of or against a finding that a trustee is an "owner" of an aircraft.

The following questions are intended to elicit robust discussion:

1. What are the appropriate obligations to impose on a trustee of a trust with beneficiaries that are neither U.S. citizens nor resident aliens in order to satisfy the statute and regulations?

2. In the case of a trust with beneficiaries that are neither U.S. citizens nor resident aliens, which rights and actions must be prohibited on the part of the beneficiaries in order to satisfy the statute and regulations?

3. Which forms of granting possession, use or operational control of an aircraft by a trustee to its beneficiaries that are not U.S. citizens or resident aliens are permitted and which are prohibited under the statute and regulations?

4. What are the specific elements of "the trustee's authority" (14 CFR 47.7(c)(iii)) about which the FAA should be concerned, and what are the forms of influence or limitation that the FAA should proscribe?

5. How may a beneficiary that is not a U.S. citizen or resident alien participate in the decision to remove a trustee in accordance with the statute and regulations?

6. To what extent, if any, are the FAA interpretations cited above in need of amendment?

7. Which, if any, knowledge and information requirements (e.g., address of operator, location of maintenance records, principal hangar location) are appropriate for the FAA to impose on trustees of trusts beneficiaries that are not U.S. citizens or resident aliens?

Issued in Washington, DC on April 20, 2011.

Marc L. Warren,

Acting Chief Counsel, Federal Aviation Administration.

[FR Doc. 2011–10013 Filed 4–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2011–0026]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the following information collection: 49 U.S.C. Sections 5309 and 5307 Capital Assistance Programs

DATES: Comments must be submitted before June 27, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. **(Note: –The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.)** All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Larkins, FTA Office of Program Management, (202) 366–1728, or *e-mail: Joyce.Larkins@dot.gov*.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5309 Capital Assistance Programs.

(OMB Number: 2132–0502).

Background: 49 U.S.C. 5309 Capital Program and section 5307 Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State and local governments and public transportation authorities for financing mass transportation projects. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR part 18, "Uniform Administrative

Requirements for Grants and Cooperative Agreements with State and Local Governments."

Respondents: State and local government, business or other for-profit institutions, and non-profit institutions.

Estimated Annual Burden on Respondents: 54 hours for each of the 3,675 respondents.

Estimated Total Annual Burden: 198,450 hours.

Frequency: Annual.

Issued: April 20, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–9972 Filed 4–25–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 80 April 26, 2011

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60–250 and 60–300
Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–250 and 60–300

RIN 1250–AA00

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is proposing to revise regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires covered Federal contractors and subcontractors to take affirmative action in employment on behalf of specified categories of protected veterans. The proposed regulations would strengthen these affirmative action provisions, detailing specific actions a contractor must take to satisfy its obligations. They would also increase the contractor's data collection obligations, and require the contractor to establish hiring benchmarks to assist in measuring the effectiveness of its affirmative action efforts. Rescission of 41 CFR part 60–250 as obsolete is also proposed.

DATES: To be assured of consideration, comments must be received on or before June 27, 2011.

ADDRESSES: You may submit comments, identified by RIN number 1250–AA00, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of six pages or less).
- *Mail:* Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0102 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210, or via the Internet at *http://www.regulations.gov.* Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking (NPRM) will be made available in the following formats: Large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210.

Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Background

Enacted in 1974, the purpose of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (Section 4212), is twofold. First, Section 4212 prohibits employment discrimination against specified categories of veterans by Federal government contractors and subcontractors. Second, it requires each covered Federal government contractor and subcontractor to take affirmative action to employ and advance in employment these veterans.

The nondiscrimination requirements and general affirmative action requirements of Section 4212 apply to all covered contractors. *See* 41 CFR 60–250.5, 60–300.5. The requirement to prepare and maintain an affirmative action program, the specific obligations of which are detailed at 41 CFR 60–250.44 and 60–300.44, apply to those contractors that meet the contract amount threshold and have 50 or more employees. In the Section 4212 context, with the awarding of a Federal contract comes a number of responsibilities, including compliance with the Section 4212 anti-discrimination and anti-retaliation provisions, meaningful and effective efforts to recruit and employ veterans protected under Section 4212, creation and enforcement of personnel policies that support its affirmative action obligations, maintenance of accurate records documenting its affirmative action efforts, and providing OFCCP access to these records upon request. Failure to abide by these responsibilities may result in various sanctions, from withholding progress payments up to and including termination of contracts and debarment from receiving future contracts.

The framework articulating a contractor's responsibilities with respect to affirmative action, recruitment, and placement has remained unchanged since the Section 4212 implementing rules were first published in 1976. Meanwhile, increasing numbers of veterans are returning from tours of duty in Iraq, Afghanistan, and other places around the world, and many are faced with substantial obstacles in finding employment upon leaving the service. A March 2010 report from the Bureau of Labor Statistics found that the 2009 annual average unemployment rate for veterans 18 to 24 years old was 21.1%, compared with 16.6% for non-veterans in that age group. The unemployment rate for veterans 25 to 34 years old was 11.1%, compared with 9.8% for non-veterans in that age group. Addressing the barriers our veterans face in returning to civilian life, particularly with regard to employment, is the focus of a number of Federal efforts, such as the Work Opportunity Tax Credit established for employers who hire unemployed disabled veterans as part of the American Recovery and Reinvestment Act signed into law by President Obama in February 2009. Strengthening the implementing regulations of Section 4212, whose stated purpose is "to require Government contractors to take affirmative action to employ and advance in employment qualified covered veterans," will be another important means by which the government can address the issue of veterans' employment.

Prior to issuing this NPRM, OFCCP conducted multiple town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, veterans' organizations, and other interested parties to understand those features of Section 4212's regulations that work well, those that can be improved, and possible new requirements that could help to effectuate the overall goal of increasing the employment opportunities for qualified protected veterans with Federal contractors.

Accordingly, this NPRM proposes several major changes to parts 60–250 and 60–300. The VEVRAA regulations found at 41 CFR part 60–250 generally apply to Government contracts of $25,000 or more entered into before December 1, 2003. The threshold amount for coverage is a single contract of $25,000 or more; contracts are not aggregated to reach the coverage

threshold. If a Federal contractor received a government contract of at least $50,000 prior to December 1, 2003, an AAP must be developed in accordance with the 41 CFR part 60–250 VEVRAA regulations. As explained below, some contracts that were entered into before December 1, 2003 will be subject to the regulations found at 41 CFR part 60–300.

The regulations found at 41 CFR part 60–300 apply to Government contracts entered into on or after December 1, 2003. The threshold amount for coverage and AAP threshold coverage is a single contract of $100,000 or more, entered into on or after December 1, 2003; contracts are not aggregated to reach the coverage threshold. The regulations found at 41 CFR part 60–300 also apply to modifications of otherwise covered Government contracts made on or after December 1, 2003. Consequently, a contract that was entered into before December 1, 2003, will be subject only to the part 60–300 regulations if it is modified on or after December 1, 2003 and meets the contract dollar threshold of $100,000 or more.

The detailed Section-by-Section Analysis below identifies and discusses all proposed changes in each section. Due to the extensive proposed revisions to the Section 4212 regulations, part 60–300 and the alternate part 60–250 (in the event part 60–250 is not rescinded, as discussed in the Summary section above and detailed in the part 60–250 Section-by-Section Analysis below) will be republished in their entirety in this NPRM for ease of reference. However, the Department is only accepting comments on the proposed revisions of the regulations detailed herein.

Section-by-Section Analysis

41 CFR Part 60–250

OFCCP is proposing two alternative approaches to part 60–250.

The first approach is to rescind part 60–250 in its entirety. As stated above, part 60–250 only covers those contracts of $25,000 or more entered into prior to December 1, 2003—over seven years before the publication of this NPRM—that have been unmodified since that time, or have been modified while maintaining a total contract value between $25,000 and $100,000. Federal Acquisition Regulation 17.204 states that, in general, government contract duration should not exceed five (5) years. Further, all contracts under $100,000 are subject to the simplified acquisition threshold and cannot be renewed. Thus, unless special excepted contracts exist, contracts covered exclusively by part 60–250 would have expired by December 1, 2008.

It is for these reasons that we propose rescission of part 60–250. However, to ensure that we do not inadvertently deprive protected veterans of their Section 4212 rights, we seek comment from the public as to whether any contracts that are covered by part 60–250 still exist.

In the event that contracts are discovered that do fall under part 60–250's coverage, we will not seek to rescind part 60–250; rather, we propose a second approach: A revised part 60–250 that mirrors the changes that we have proposed to part 60–300. A Section-by-Section Analysis of this alternative follows below.

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–250.1 Purpose, Applicability and Construction

Paragraph (a) of the current rule sets forth the scope of Section 4212 and the purpose of its implementing regulations. We propose a few minor changes to this section. First, we propose deleting the reference to the "Vietnam Era Veterans' Readjustment Assistance Act of 1974" or "VEVRAA," and replacing it, in this section and throughout the regulation, with "Section 4212." Referring to the operative law as "VEVRAA" is not entirely accurate, as Section 4212, where VEVRAA was initially codified, has been amended several times since VEVRAA was passed—most recently by the Jobs for Veterans Act of 2002 (JVA), which amended the categories of protected veterans and the dollar amount for contract coverage that subsequently led to the promulgation of the regulations found at part 60–300. Referring to the law as "Section 4212" clarifies that we are referring to the law as amended. This is more accurate than "VEVRAA" and should alleviate any further confusion.

Second, paragraph (a) discusses the contractor's affirmative action obligations, but does not discuss another primary element of the regulations: The prohibition of discrimination against veterans protected under Section 4212. Accordingly, the proposed regulation adds language to the first sentence of paragraph (a) to include this important element.

Additionally, the proposed rule makes two minor language changes in order to comport with some of the newly proposed definitions in § 60–250.2. First, the term "other protected veterans" is amended to read "active duty wartime or campaign badge veterans," for the reasons detailed in the Section-by-Section Analysis of § 60–250.2. Second, all references to "covered veterans" is amended to read "protected veterans," due to the inclusion of a definition for "protected veteran" in the proposed § 60–250.2.

Section 60–250.2 Definitions

The proposed rule incorporates the vast majority of the existing definitions contained in existing § 60–250.2 without change. However, OFCCP proposes some changes to the substance and structure of this section, as set forth below.

With regard to the structure of this section, the current rule lists the definitions in order of subject matter. However, for those who are unfamiliar with the regulations, this organizational structure makes it difficult to locate specific terms within this section. The proposed rule reorders the defined terms in alphabetical order, and then assigns each term a lettered subparagraph heading. This modified structure is proposed for ease of reference, and to facilitate citation to specific definitions. However, because of this reordering, the citation to specific terms may be different in the proposed rule than it is currently. For instance, the term "contract," which is § 60–250.2(h) in the current regulations, is § 60–250.2(d) in the proposed regulation.

With regard to substantive changes, the proposed rule first clarifies the definitions pertaining to the classifications of veterans who are protected under part 60–250. The classifications of protected veterans in part 60–250 are those described in Section 4212 prior to the enactment of the JVA and are as follows: (1) Special disabled veterans; (2) veterans of the Vietnam era; (3) veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized; and (4) recently separated veterans. Currently, § 60–250.2 includes specific definitions for "special disabled veterans," "veterans of the Vietnam era," and "recently separated veterans," *See* 41 CFR 60–250.2(n), (p), (r). It does not contain a specific definition for "veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized." Instead, this classification is included within the current "other protected veteran" definition. *See* 41 CFR 60–250.2(q). This anomaly has caused significant confusion, as many individuals who are unfamiliar with the regulations believe that the "other

protected veteran" category is a "catch-all" that includes all veterans. To address this issue, the proposed rule replaces the "other protected veteran" definition that is contained in the current regulation with the more precise classification language "active duty wartime or campaign badge veteran" that appears in the statute. This replacement will not change the scope of coverage. Instead, individuals currently covered under the "other protected veteran" classification as defined in the current rule will still be covered, but will fall under the more accurate "active duty wartime or campaign badge veteran" classification. It should be noted that this proposed rule does not revise the VETS–100 form, which is administered by the Department's Veterans' Employment and Training Service (VETS) and requires the contractor to tabulate the number of employees and new hires in each of the component categories of protected veterans under Section 4212. The VETS–100 form currently maintains the use of "other protected veteran" classification. After the final rule pertaining to these regulations is published, OFCCP will work with VETS to conform the VETS–100 forms to the new Section 4212 regulations. DOL will provide the public with an opportunity to comment on these changes, which will not become effective until approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995.

The current rule also lacks a clear, overarching definition of "protected veteran," under part 60–250. Although it discusses the responsibilities of a contractor to all categories of protected veterans collectively, it also enumerates each classification of protected veteran several times throughout the regulation. Accordingly, the proposed rule includes a new definition of "protected veteran," which includes all four classifications of protected veterans separately identified and defined in 60–250.2. This new term would replace the phrase "special disabled veteran(s), veterans of the Vietnam era, recently separated veteran(s), or other protected veteran(s)" used throughout the current rule to refer to these protected veterans in the aggregate. The individual categories of protected veterans continue to be separately identified in the first paragraph of the equal opportunity clause in § 60–250.5 to permit the identification of protected veterans in the context of the contract (*see* Section-by-Section Analysis of § 60–250.5, *infra,* for further explanation).

The proposed rule also replaces the term "Deputy Assistant Secretary," found currently at § 60–250.2(d), with "Director." The current § 60–250.2(d) defines "Deputy Assistant Secretary" as "the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee." Following the elimination of the Employment Standards Administration in November 2009, the head of OFCCP now has the title of Director. Accordingly, the proposed rule reflects this change, which will be made throughout part 60–250.

The proposed rule also adds a definition of employment service delivery system, defined in current § 60–300.2(y). Because the term "employment service delivery system" is mentioned in part 60–250, for example, in paragraph 2 of the equal opportunity clause found in § 60–250.5(a), we have added the definition for clarity.

The proposed rule also adds a definition of "linkage agreement," now described in the OFCCP Federal Contract Compliance Manual. We propose adding a definition of "linkage agreement" to the regulations for clarity. The proposed regulation defines "*linkage agreement*" to mean an agreement between the contractor and appropriate recruitment and/or training sources. A linkage agreement is to be used by the contractor as a source of potential applicants to the covered groups in which the contractor is interested. The contractor's representative that signs the linkage agreement should be the company official responsible for the contractor's affirmative action program and/or has hiring authority.

Section 60–250.3 [Reserved]

Section 60–250.4 Coverage and Waivers

The proposed regulation replaces the term "Deputy Assistant Secretary," found in paragraphs (b)(1), (b)(2), and (b)(3) of this section, with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.5 Equal Opportunity Clause

Paragraph (a) contains the equal opportunity (EO) clause that must be included in all covered Government contracts and subcontracts. The proposed regulation includes numerous substantive changes.

First, the proposed regulation adds additional language to subparagraph 2 of the EO clause in this section clarifying the contractor's responsibility to "list" jobs in the context of mandatory listing requirements. The mandatory job listing requirement discussed in paragraphs 2 and 3 of the EO clause mandates that the contractor list all employment openings for the duration of the contract with an "appropriate employment service delivery system," (hereinafter "employment service"). This listing not only provides a source for veterans to access job listings, but also allows the employment service to provide priority referrals of veterans for the Federal contractor jobs listed with the employment service. Following the publication of the most recent revisions to part 60–250 regulations, questions were raised as to the manner in which a contractor must provide information to an employment service in order to satisfy the requirement. There have been many instances in which a contractor provided job listings to an employment service in a manner or format that was unusable to that employment service. In order to satisfy the listing requirement, the contractor must provide job vacancy information to the appropriate employment service *in the manner that the employment service requires* in order to include the job in their database so that they may provide priority referral of veterans. OFCCP has long interpreted the listing responsibilities of a contractor in this manner. This change clarifies OFCCP's policy.

The proposed regulation also adds a sentence to the end of paragraph 2 clarifying that, for any contractor who utilizes a privately-run job service or exchange to comply with its mandatory listing obligation, the information must be provided to the appropriate employment service in the manner that the employment service requires. This clarification is proposed for two reasons. First, contractors' use of private job listing services has increased following the elimination of the Department's America's Job Bank listing service. Second, we have received feedback from officials in state employment services that some contractors provide job listing information to these private job listing services assuming that they have then fulfilled their listing obligations, but that the private job listing services do not always provide the information in the requisite manner in order to list the job opening in its database and provide priority referral of protected veterans.

The proposed regulations also add further detail to paragraph 4 of the EO clause with respect to the specific information the contractor must provide to state employment services in each state where the contractor has establishments. The current regulations require that the contractor provide the appropriate state employment service

with the name and location of each of the contractor's hiring locations. The proposed regulations require that the contractor provide the state employment service with the following additional information: (1) Its status as a Federal contractor; (2) the contact information for the contractor hiring official at each location in the state; and (3) its request for priority referrals of protected veterans for job openings at all its locations within the state. This information shall be updated on an annual basis. These three additional items are proposed in light of feedback received from state employment services that there is no centralized list of Federal contractors that they can consult in order to determine if a listing employer is a Federal contractor. If the Federal contractor does not specifically identify itself as such to the state employment service and further identify the hiring official, the state employment service often will not know if it should be providing priority referrals of protected veterans as required by § 60–250.84 or who to contact. Requiring the Federal contractor to provide this additional information will facilitate the priority referral process. The proposed regulation also adds a sentence clarifying that, if the contractor uses any outside job search companies (such as a temporary employment agency) to assist in its hiring, the contractor must also provide the state employment service with the contact information for these outside job search companies. Due to the widespread use of these outside job search companies, this proposed language is included to ensure that the state employment service has the ability to contact all individuals responsible for a contractor's hiring in order to effectively carry out its obligations under § 60–250.84. Finally, the proposed regulation replaces the terms "state employment security agency," "state agency," and "workforce agency" found in a few instances in this paragraph, with the term "employment service delivery system." The terms are interchangeable as used in this paragraph, and as we propose to add "employment service delivery system" to the definitions in § 60–250.2, we use it instead.

The proposed regulation adds a new paragraph 5 to the EO clause which requires the contractor to maintain records, on an annual basis, of the total number of referrals it receives from state employment services, the number of priority referrals of protected veterans it receives, and the ratio of protected veteran referrals to total referrals. This is one of a few new data collection requirements set forth in this NPRM that are proposed in order to give the contractor (as well as OFCCP, in the course of compliance evaluations) a quantifiable measure of the availability of protected veterans in the workforce. The contractor would be required to maintain these records on the number of referrals for five (5) years. We propose a five year record retention requirement for multiple reasons. First, because the proposed rule anticipates that the contractor will use the referral data in setting annual hiring benchmarks (*see* Section-by-Section discussion in 250.45, *infra*) we wanted to ensure that the contractor has sufficient historical data on the number of referrals it has received in years past to meaningfully inform the benchmarks it sets going forward. Further, because the proposed rule anticipates that the contractor will review its outreach efforts and adjust them to maximize recruitment of protected veterans (*see* Section-by-Section discussion in 250.44(f)(3), *infra*), we wanted to ensure that the contractor has sufficient historical data to recognize meaningful trends in recruitment and, subsequently, to identify effective recruitment efforts that corresponded with time periods of increased recruitment of protected veterans. If the contractor had fewer years of referral data on hand, it is less likely that the data would provide meaningful assistance to the contractor in these respects. We solicit public comment on the burden and practical utility of this requirement.

In paragraph 10 of the EO clause (currently paragraph 9; renumbered due to the newly proposed paragraph 5, above), we propose two revisions. The third sentence of this paragraph is revised to clarify the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. It also revises the parenthetical at the end of the sentence, replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled individual" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notice themselves. The proposed regulations would also add the following sentences to the end of proposed paragraph 10 (current paragraph 9) of the EO clause: "With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees are otherwise able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application." The addition of these sentences is in response to the increased use of telecommuting and other work arrangements that do not include a physical office setting, as well as Internet-based application processes in which applicants never enter a contractor's physical office. These revisions therefore would permit equivalent access to the required notices for these employees and applicants.

For paragraph 11, which refers to the contractor's obligation to notify labor organizations or other worker representatives about its obligations under Section 4212, we propose adding language clarifying that these obligations include non-discrimination, in addition to affirmative action. The current paragraph 11 does not specifically mention the contractor's non-discrimination obligations.

The proposed regulations add a new paragraph 13 to the EO clause which would require the contractor to state and thereby affirm in solicitations and advertisements that it is an equal employment opportunity employer of veterans protected under Section 4212. A comparable clause exists in the equal opportunity clause of the Executive Order 11246 regulations, *see* 41 CFR 60–1.4(a)(2), describing the protected classes under that Order. This proposed addition ensures consistency between the regulations and aids in communicating the contractor's EEO responsibilities to job seekers.

The proposed regulations amend paragraphs (d) and (e) of this section to require that the entire equal opportunity clause be included verbatim in Federal contracts. This is to ensure that the contractor and subcontractor read and understand the language in this clause. Feedback from town hall meetings and webinars conducted by OFCCP prior to the publication of this proposed rule indicated that some contractors, and especially subcontractors, are not aware of their EO Clause responsibilities. In the case of subcontractors, they often rely on the prime contractors to inform them of their nondiscrimination and

affirmative action program obligations. If the EO Clause is not written in full, subcontractors are disadvantaged and often unaware of their statutory obligations until audited by OFCCP. Particularly given the emphasis the administration and Congress have placed on veterans' employment issues, we believe it is important to take whatever steps will inform contractors and subcontractors of the obligations under the EO Clause. OFCCP solicits public comment on this proposal and any other steps that would increase the contractor community's awareness of its obligations.

The proposed regulation also replaces the term "Deputy Assistant Secretary," found in paragraph (f) of this section and in paragraphs 9 and 11 of the EO clause, with the term "Director," for the reasons set forth in the discussion of § 60–250.2. It also replaces the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)" found in the second sentence of Paragraph 1 and in Paragraph 9 of the EO clause, with the term "protected veteran," for the reasons set forth in the discussion of § 60–250.2. This phrase remains in the first sentence of Paragraph 1 (with "active duty wartime or campaign badge veteran" replacing "other protected veteran," as discussed in § 60–250.2, *supra*) of the EO clause so it is clear to those reading the clause independently from the rest of the regulation precisely which classifications of veterans are protected by this part of the Section 4212 regulations. Additionally, to ensure that the contractor is aware of the appropriate definitions, we propose adding a footnote to the title of the EO Clause stating explicitly that the definitions set forth in 41 CFR 60–250.2 apply to the EO Clause and are incorporated by reference. Finally, all references to "VEVRAA" are replaced with the term "Section 4212," for the reasons set forth in the discussion of § 60–250.1.

Subpart B—Discrimination Prohibited

Section 60–250.21 Prohibitions

This section of the rule defines and addresses prohibited discriminatory conduct under Section 4212. The proposed rule includes an additional clause at the end of paragraph (f)(3), qualifying that an individual who rejects a reasonable accommodation made by the contractor may still be considered a qualified disabled veteran if the individual subsequently provides and/or pays for a reasonable accommodation. For instance, if a veteran knows that a certain piece of equipment that he or she already owns will allow him or her to perform the functions of the job, and that equipment would represent an undue burden for the contractor to provide, the veteran would be able to provide his or her own equipment and still be considered a qualified disabled veteran. We propose inserting this language to ensure consistency with the requirement in paragraph 4 of Appendix A to the proposed rule, which requires that individuals be allowed to pay for or provide their own accommodation if providing the accommodation for the employee would represent an undue burden to the contractor.

The proposed revisions also include minor language changes, replacing the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)" found in paragraphs (a), (b), (c)(1), (d)(1), (e), (g)(1), and (i) with the term "protected veteran," for the reasons set forth in the discussion of § 60–250.2, above.

Section 60–250.22 Direct Threat Defense

The proposed revisions change "§ 60–250.2(w)" in the parenthetical at the end of this section to "§ 60–250.2(f)," in light of restructuring the Definitions section in alphabetical order, as discussed in § 60–250.2, above.

Section 60–250.24 Drugs and alcohol

We propose a correction to paragraph (b)(3) of this section, to refer to § 60–250.23(d)(2) instead of (c).

Subpart C—Affirmative Action Program

Section 60–250.40 Applicability of the Affirmative Action Program Requirement

This section sets forth which contractors are required to maintain an affirmative action program, and the general timing requirements for its creation and submission to OFCCP. We propose a minor clarification to paragraph (c) of this section, specifying that the affirmative action program shall be reviewed and updated annually "by the official designated by the contractor pursuant to § 60–250.44(i)." While this is the intent of the existing language, the proposal clarifies this intention d ensures that company officials who are knowledgeable of the contractor's affirmative action activities and obligations are reviewing the program.

Section 60–250.41 Availability of Affirmative Action Program

This section sets forth the manner by which the contractor must make its affirmative action programs available to employees for inspection, which includes that the location and hours during which the program may be obtained. The proposed regulation adds a sentence at the end of this section requiring that, in instances where the contractor has employees who do not work at the contractor's physical establishment, the contractor shall inform these employees about the availability of the affirmative action program by means other than a posting at its establishment. This addition is proposed in light of the increased use of telecommuting and other flexible workplace arrangements.

Section 60–250.42 Invitation to Self-identify

The proposed revisions of this section make significant, substantive changes to the contractor's responsibilities and the process through which applicants are invited to self-identify as a veteran protected under the part 60–250 regulations, particularly those set forth in paragraphs (a) and (b). As described more fully below, these changes are proposed in order to collect enhanced data pertaining to protected veterans, which will allow the contractor and OFCCP to identify and monitor the contractor's employment practices with respect to protected veterans.

The current regulation requires the contractor to invite applicants, who are special disabled veterans as defined in 60–250.2, to self-identify only after making an offer of employment, subject to two exceptions. *See* § 60–250.42(a). For all other veterans protected by part 60–250, the current regulation requires the contractor to invite such applicants to self-identify "before they begin [their] employment duties." *See* § 60–250.42(b).

The two exceptions to the prohibition on inviting special disabled veterans to self-identify pre-offer contained in 41 CFR 250.42(a) are not proposed to change. The exceptions permit a contractor to invite special disabled veterans to self-identify prior to making a job offer when: (1) The invitation is made while the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or (2) the invitation is made pursuant to a Federal, state or local law requiring affirmative action for special disabled veterans. These two exceptions are identical to the exceptions to the prohibition on pre-offer disability-

related inquiries contained in the implementing regulations for Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503). *See* 41 CFR 60–741.42. Consequently, under existing Section 4212 regulations, the contractor is permitted, although not required, to create employment programs targeting special disabled veterans and inviting applicants to identify whether they are eligible for the program pre-offer. OFCCP is not proposing a change in this provision.

The proposed change requires the contractor to invite all applicants to self-identify as a "protected veteran" prior to the offer of employment. This proposed change would invite applicants to self-identify as a "protected veteran" at the pre-offer stage; it would not seek the specific protected classification of protected veteran (special disabled veteran, veteran of the Vietnam era, recently separated veteran, or active duty wartime or campaign badge veteran). The pre-offer invitation would not require protected veteran applicants to disclose their status as a protected veteran if they chose not to (*see* the proposed Sample Invitation to Self-Identify in Appendix B, *infra*). This new pre-offer self-identification step also would include the requirement, currently stated in paragraph (e) of this section, that the contractor maintain the pre-offer self-identification data and supply it to OFCCP upon request. Incorporating self-identification into the application process would allow the contractor, and subsequently OFCCP, to collect valuable, targeted data on the number of protected veterans who apply for Federal contractor positions. This data would enable the contractor and OFCCP to measure the effectiveness of the contractor's recruitment and affirmative action efforts over time. Moreover, the contractor and OFCCP will be better equipped to improve and refine successful and effective recruiting mechanisms, thereby increasing the number of applications from protected veterans. Additionally, this data will enable OFCCP to identify and promote successful recruitment and affirmative efforts taken by the contractor community.

Through the various outreach efforts to stakeholders OFCCP has conducted in advance of this NPRM, an issue has been raised regarding the implementing regulations of Title I of the ADA and Section 503, which limit the extent to which employers may inquire about disabilities prior to an offer of employment. *See* 29 CFR 1630.13, 1630.14; 41 CFR 60–741.42. The concern is that requiring the contractor to invite applicants to self-identify as a protected veteran would violate the general prohibition against pre-offer disability-related inquiries because some protected veterans will be special disabled veterans. This concern is misplaced, as the ADA and Section 503 regulations permit the contractor to conduct a pre-offer inquiry into disability status if it is 'made pursuant to a Federal, state or local law requiring affirmative action for individuals with disabilities,' such as Section 4212 or Section 503. Id.

However, while it would be legally permissible to do so, OFCCP is not proposing that the pre-offer self-identification identify the specific category of protected veteran for three primary reasons. First, given that the overall population of protected veterans is already relatively small, dividing the pool of protected veterans into smaller component classifications would tend to reduce the ability of the contractor to engage in meaningful data analysis of applicants, such as that proposed in § 60–250.44(h) and (k). Second, a protected veteran may fall into several protected categories, which could create unnecessary complexity to data analysis. For example, the same individual could be a protected veteran because he or she is a special disabled veteran and a veteran of the Vietnam era. Finally, at the pre-offer stage under the proposed rule the contractor's obligations would be the same with respect to each category of protected veteran, thus there is no apparent benefit to knowing the specific category of protected veteran to which an applicant belongs.

In addition to the pre-employment self-identification provisions in § 60–250.42(a) of the proposed rule, § 60–250.42(b) of the proposed rule also requires the contractor to invite individuals, after the offer of employment is extended, to self-identify as a member of one or more of the four classifications of protected veterans under part 60–250. Thus, post-offer identification will enable the contractor to capture refined data pertaining to each classification of protected veterans, as set forth in the VETS–100 form, which the contractor is required to maintain and submit. As is currently the case, the post-offer self-identification as a special disabled veteran would not require applicants to disclose the specific nature of their disability.

We propose to revise paragraph (c) of this section by deleting the second sentence of the parenthetical at the end of the paragraph. This sentence described the format of and rationale behind the current Appendix B, which has been substantially amended in light of the new self-identification procedures proposed herein. For the same reasons, we propose revising paragraph (d) of this section to reflect the newly proposed self-identification process in which applicants will only identify themselves as special disabled veterans specifically after an offer of employment is made. Further, we propose revising paragraph (d) to require, rather than suggest, that the contractor seek the advice of the applicant regarding accommodation. Requiring this of the contractor will help initiate a robust interactive and collaborative process between the contractor and the employee or applicant to identify effective accommodations that will facilitate a special disabled veteran's ability to perform the job. While the purpose of this requirement is to promote agreement between the contractor and employee or applicant regarding accommodations to be used, this proposed change would not require that, in the event that multiple reasonable accommodations exist, the contractor must utilize the reasonable accommodation preferred by the employee or applicant.

We also propose replacing the term "appropriate accommodation" in paragraph (d) with "reasonable accommodation." We have always interpreted "appropriate accommodation" in this paragraph as substantively identical to the term "reasonable accommodation." However, "reasonable accommodation" is already defined in these regulations and has a more broadly used and accepted legal definition, we propose using it here to avoid any confusion. This language change does not alter the contractor's existing obligations.

Section 60–250.43 Affirmative Action Policy

This section outlines the contractor's non-discrimination and affirmative action obligations under Section 4212. We propose two minor revisions to this section.

First, we propose replacing the phrase "because of status as a" in this section to "against," in order to clarify that the non-discrimination requirements of Section 4212 are limited to protected veterans and that reverse discrimination claims may not be brought by individuals who do not fall under one of the categories of veterans protected by part 60–250. Second, we propose replacing the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)," used twice in this section, with the term "protected

veteran," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.44 Required Contents of Affirmative Action Programs

This section details the elements that the contractor's affirmative action programs must contain. These existing elements include: (1) An equal employment opportunity policy statement; (2) a comprehensive annual review of personnel processes; (3) a review of physical and mental job qualifications; (4) a statement that the contractor is committed to making reasonable accommodations for persons with physical and mental disabilities; (5) a statement that the contractor is committed to ensuring a harassment-free workplace for protected veterans; (6) external dissemination of the contractor's affirmative action policy, as well as outreach and recruitment efforts; (7) the internal dissemination of the contractor's affirmative action policy to all of its employees; (8) the development and maintenance of an audit and reporting system designed to evaluate affirmative action programs; and (9) training for all employees regarding the implementation of the affirmative action program.

The first substantive proposed revisions to this section focus on the contractor's policy statement as set forth in paragraph (a). The proposed regulation revises the second sentence to clarify the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. It also revises the parenthetical at the end of the sentence, replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled individual" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notice themselves. The proposed regulation also revises the third sentence of paragraph (a) regarding the content of the policy statement, replacing the inclusion of the "chief executive officer's attitude on the subject matter" with "chief executive officer's support for the affirmative action program." This proposed change is made to clarify the intent of including a statement from the contractor's CEO in the affirmative action policy statement, which is to signal to the contractor's employees that support for the affirmative action program goes to the very top of the contractor's organization.

In paragraph (b), the proposed rule requires that the contractor must review its personnel processes on at least an annual basis to ensure that its obligations are being met. The current rule requires that the contractor review these processes "periodically." This standard is vague and subject to confusion. Indeed, OFCCP's efforts to enforce this requirement in recent years have been complicated by contractors' various, subjective interpretations of what constitutes "periodic" review. This proposal sets forth a clear, measurable, and uniform standard that will be easily understood by the contractor and more easily enforced by OFCCP.

Further, the proposed revisions mandate certain specific steps that the contractor must take, at a minimum, in the review of its personnel processes. These specific steps are those currently set forth in Appendix C to the regulation. Appendix C currently suggests that the contractor: (1) Identify the vacancies and training programs for which protected veteran applicants and employees were considered; (2), provide a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations; and (3) describe the nature and type of accommodations for special disabled veterans who were selected for hire, promotion, or training programs. Previously, these steps were recommended as an appropriate set of procedures. OFCCP's enforcement efforts have found that many contractors do not follow these recommended steps, and that the documentation contractors maintain of the steps that they do take are often not conducive to a meaningful review by the contractor or OFCCP, particularly in the event of employee/applicant complaints. Such a meaningful review has always been the goal of the requirements in paragraph (b), as it ensures that the contractor remains aware of and actively engages in its overall affirmative action obligations toward protected veterans. The proactive approach set forth in the current Appendix C would provide greater transparency between the contractor, its applicants/employees, and OFCCP as to the reasons for the contractor's personnel actions. Requiring that the contractor record the specific reasons for their personnel actions, and making them available to the employee or applicant upon request, would also aid them in clearly explaining their personnel actions to applicants and employees, which could subsequently reduce the number of complaints filed against contractors. Thus, we propose requiring the contractor to take the steps outlined currently in Appendix C (which are incorporated into paragraph (b) in the proposed rule), and encourage the contractor to undertake any additional appropriate procedures to satisfy its affirmative action obligations.

The proposed paragraph (c) clarifies that all physical and mental job qualification standards must be reviewed and updated, as necessary, on an annual basis. As with paragraph (b), the current rule's requirement that the contractor review these standards "periodically" is vague and subject to confusion. OFCCP has concluded that contractors inconsistently interpreted what constitutes "periodic" review. The proposed change provides a clear, measurable, and uniform standard.

The proposed paragraph (c)(1) adds language requiring the contractor to document the results of its annual review of physical and mental job qualification standards. The regulation has long required this review to ensure that job qualification standards which tend to screen out disabled veterans are job-related and consistent with business necessity. The proposed change would merely require that the contractor document the review it has already been required to perform. It is anticipated that this documentation would list the physical and mental job qualifications for the job openings during a given AAP year—which should already be available from the contractor's job postings—and provide an explanation as to why each requirement is related to the job to which it corresponds. Documenting this review will ensure that the contractor critically analyzes its job requirements and proactively eliminates those that are not job-related. It will also allow OFCCP to conduct audits and investigations in a more thorough and efficient manner.

Paragraph (c)(3) currently provides that, as a defense to a claim by an individual that certain mental or physical qualifications are not job-related and consistent with business necessity, the contractor may assert that the individual poses a "direct threat" to the health or safety of the individual or others in the workplace. The definition of "direct threat" in these regulations spells out the criteria that the contractor must consider in determining whether a "direct threat" exists. The proposed paragraph (c)(3) would require the contractor to contemporaneously create a written statement of reasons supporting its belief that a direct threat exists, tracking the criteria set forth in the "direct threat" definition in these regulations, and maintain the written statement as set forth in the recordkeeping requirement in § 60–250.80. Once again, this is to ensure that

the contractor's "direct threat" analysis—which is already required under these regulations, as well as regulations to Section 503 of the Rehabilitation Act and the Americans with Disabilities Act—is well-reasoned and available for review by OFCCP.

Finally, for both the proposed documenting requirements in paragraphs (c)(1) and (c)(3), the proposed regulation would require that the contractor treat the created documents as confidential medical records in accordance with § 60–250.23(d).

Perhaps the most significant substantive changes in the proposed rule address the scope of the contractor's recruitment efforts and the dissemination of its affirmative action policies described in paragraphs (f) and (g) of this section. While these two paragraphs generally require that the contractor engage in recruitment and disseminate its policies, the current rule recommends rather than requires the specific methods for carrying out these obligations.

The current paragraph (f) suggests a number of outreach and recruitment efforts that the contractor can undertake in order to increase the employment opportunities for protected veterans. *See* 41 CFR 60–250.44(f)(1). The proposed paragraph (f) requires that the contractor engage in a minimum number of outreach and recruitment efforts as described in proposed paragraph (f)(1). The proposed paragraph (f) also includes a list of additional outreach and recruitment efforts that are suggested (proposed paragraph (f)(2)), a new requirement that the contractor conduct self-assessments of their outreach and recruitment efforts (proposed paragraph (f)(3)), and a clarification of the contractor's recordkeeping obligation with regard to its outreach and recruitment efforts (proposed paragraph (f)(4)).

In the proposed paragraph (f)(1), the contractor would be required to engage in three outreach and recruitment efforts. First, the contractor would be required to enter into linkage agreements and establish ongoing relationships with the Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment. The statute already requires contractors and subcontractors to send their job listings to the Local Veterans' Employment Representative in the local or state employment service office for listing and priority referral of protected veterans. The Local Veterans' Employment Representative is an existing government resource provided for veterans to help them find employment.

Second, the contractor would be required to enter into a linkage agreement with at least one of several other listed organizations and agencies for purposes of recruitment and developing training opportunities. The listed organizations and agencies are those that are listed in the current paragraph (f)(1), with one addition: The Department of Defense Transition Assistance Program (TAP), or any subsequent program that replaces TAP. This program is administered in part by the Department of Labor's Veterans' Employment and Training Service (VETS) in Family Services Offices or similar offices at military bases. (*See http://www.dol.gov/vets/programs/tap/tap_fs.htm*) According to the Department of Defense, there are 249 TAP offices in installations around the United States, and another 16 TAP offices located in installations abroad. The TAP was designed to "smooth the transition of military personnel and family members leaving active duty." The TAP includes employment workshops with the Department of Labor, and offers individualized employment assistance and training. It is currently required for all those serving in the Marine Corps, and is generally encouraged and supported by the other branches of the military. Accordingly, it provides an excellent existing source for identifying qualified protected veterans. TAP is a validated multi-government agency program that assists separating veterans in finding employment, from resume writing to interview techniques to dressing for success. OFCCP is aware, however, that not all contractors are located near a military base or similar facility which provides TAP; therefore, a contractor may select another organization or agency from the list that is more conducive to its recruiting efforts.

Third, paragraph (f)(1) would also require that the contractor consult the Employer Resources section of the National Resource Directory, a partnership with an online collaboration (*http://www.nationalresourcedirectory.gov/employment/job_services_and_employment_resources*) among the Departments of Labor, Defense, and Veterans Affairs. New contractors and subcontractors often inquire about how they can find qualified protected veterans to comply with their AAP obligations. The National Resource Directory is a leading government Web site that provides prospective employers of veterans access to veterans' service organizations, existing job banks of veterans seeking employment, and other resources at the national, state and local levels. The NPRM gives contractors and subcontractors the flexibility to select any organization on the National Resource Directory for outreach and recruit purposes. Since this Web site is a great nationwide resource, any contractor would likely find it useful in fulfilling its affirmative action obligations, such as recruiting veterans. The contractor would be required to establish a linkage agreement with at least one of the many veterans' service organizations listed on the site (excluding organizations described in the previous paragraph) to facilitate referral of qualified protected veterans, as well as other related advice and technical assistance. We believe that these first two efforts that the proposed rule requires would assist the contractor in establishing a baseline level of contact with veteran and employment-related organizations, while providing the contractor with the flexibility to establish linkage agreements with organizations that are most tailored to the contractor's hiring needs. Finally, the proposed paragraph (f)(1) would also require that the contractor send written notification of company policy related to affirmative action efforts to its subcontractors, including subcontracting vendors and suppliers, in order to request appropriate action on their parts and to publicize the contractor's commitment to affirmative action on behalf of protected veterans. While the proposed regulations would not require that the contractor send written notification to vendors and suppliers who are not subcontractors as defined by these regulations, such disclosure remains an encouraged activity, just as it is under the current regulation. *See* 41 CFR 60–250.44(f)(6).

We believe that the required linkage agreements we propose in paragraph (f)(1) will greatly facilitate the contractor's efforts to attract qualified protected veteran applicants. We encourage comments from stakeholders regarding this proposal, particularly if stakeholders have information on recruitment sources not included in this proposal that might increase employment of protected veterans.

In paragraph (f)(2) of the proposed rule, we list a number of outreach and recruitment efforts that are suggested measures for increasing employment opportunities for protected veterans. The efforts listed in paragraph (f)(2) are largely identical to the efforts that are suggested in paragraphs (f)(2) through (f)(5) and (f)(7) through (f)(8) of the current rule. This includes: (1) Holding briefing sessions with representatives from recruiting resources; (2)

incorporating recruitment efforts for protected veterans at educational institutions; (3) considering applicants who are known protected veterans for all available positions when the position applied for is unavailable; and (4) any other positive steps the contractor believes are necessary to attract qualified protected veterans, including contacts with any local veteran-related organizations.

Paragraph (f)(3) of the proposed rule would require the contractor, on an annual basis, to review the outreach and recruitment efforts it has undertaken over the previous twelve months and evaluate their effectiveness in identifying and recruiting qualified protected veterans, and document its review. Contractors that do not proactively monitor their outreach and recruitment efforts often lose opportunities to consider and hire qualified protected veterans for employment. This requirement will allow the contractor to look at its measurable accomplishments and reconsider unproductive methods. We believe requiring this on an annual basis strikes the proper balance between ensuring that adjustments to recruitment efforts are made on a timely basis if needed, while also ensuring that the contractor has enough data on existing recruitment efforts to be able to determine if adjustments need to be made.

We recognize that the "effectiveness" of an outreach or recruitment effort is not easily defined, and may include a number of factors that are unique to a particular contractor establishment. Generally speaking, a review of the efficacy of a contractor's efforts should include the number of protected veteran candidates each effort identifies. Recognizing that other unique and intangible characteristics may contribute to the assessment of the "effectiveness" of a given effort, the proposed regulation allows the contractor some flexibility in making this assessment. However, the proposed regulation requires that the contractor consider the numbers of protected veteran referrals, applicants, and hires for the current years and two previous years as criteria in evaluating its efforts, and document all other criteria that it uses to assess the effectiveness of its efforts, so that OFCCP compliance officers are able to understand clearly the rationale behind the contractor's self-assessment. The contractor's conclusion as to the effectiveness of its outreach must be reasonable as determined by OFCCP in light of these regulations. The primary indicator of effectiveness is whether qualified veterans have been hired. Further, should the contractor determine that its efforts were not effective, the proposed rule requires the contractor to identify and implement one or more of the alternative efforts listed in proposed paragraphs (f)(1) and (f)(2) in order to fulfill its obligations. The general purpose of this self-assessment is to ensure that the contractor think critically about its recruitment and outreach efforts, identify and ascertain successful recruiting efforts, and modify its efforts to ensure that its obligations are being met.

Paragraph (f)(4) of the proposed rule would require that the contractor document its linkage agreements and the activities it undertakes in order to comply with paragraph (f), and retain these documents for a period of five (5) years. This requirement will enable the contractor and OFCCP to more effectively review recruitment and outreach efforts undertaken to ensure that the affirmative action obligations of paragraph (f) are satisfied.

Paragraph (g) of this section requires that the contractor develop internal procedures to communicate to its employees its obligation to engage in affirmative action efforts. The current paragraph (g)(2) contains several suggested methods by which the contractor may accomplish this. The proposed rule would mandate the following practices: (1) Include its affirmative action policy in its policy manual; (2) inform all applicants and employees of its affirmative action obligations; (3) conduct meetings with executive, management, and supervisory personnel to explain the intent of the policy and responsibility for its implementation; and (4) discuss the policy in orientation and management training programs. In addition, if the contractor is party to a collective bargaining agreement, then the proposed rule would require the contractor to meet with union officials and representatives to inform them about the policy and seek their cooperation. Other suggested elements in the current paragraph (g)(2) remain in the proposed rule at newly created paragraph (g)(3) as suggested additional dissemination efforts the contractor can make. This includes suggesting that the contractor use company newspapers, magazines, annual reports, handbooks, or other media to publicize its affirmative action obligations and feature protected veterans and their accomplishments. *See* current regulation at 41 CFR 60–250.44(g)(2)(iii), 60–250.44(g)(2)(vii); 60–250.44(g)(2)(viii).

As for the requirement to inform all applicants and employees of its affirmative action obligations (item (2) in the preceding paragraph), the proposed regulation would require that the contractor hold meetings with its employees at least once per year to discuss the contractor's affirmative action policies and to explain contractor and individual employee responsibilities under these policies. These could be traditional in-person meetings, or meetings facilitated by technology such as webinars or videoconferencing. It would also require that the contractor describe individual employee opportunities for advancement in furtherance of the contractor's affirmative action plan. Frequent establishment-wide training on affirmative action issues will facilitate a greater understanding of the purpose of the affirmative action plan among employees. This training will also enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. Finally, a newly proposed paragraph (g)(4) would require the contractor to document its activities in order to comply with paragraph (g), and retain these documents as records subject to the recordkeeping requirements of § 60–250.80. This will allow for a more effective review by the contractor and OFCCP to ensure that the affirmative action obligations of paragraph (g) are being met.

Paragraph (h) of this section details the contractor's responsibilities in designing and implementing an audit and reporting system for its affirmative action program, including the specific computations and comparisons that are part of the audit. The proposed regulations add a new paragraph (h)(1)(vi) requiring the contractor to document the actions taken to comply with paragraphs (h)(1)(i)–(v), and maintain such documents as records subject to the recordkeeping requirements of § 60–250.80. Again, this will allow for a more effective review by the contractor and OFCCP to ensure the affirmative action obligations of this paragraph are being met.

The only substantive proposed change in paragraph (i), requires that the identity of the officials responsible for a contractor's affirmative action activities must appear on all internal and external communications regarding the contractor's affirmative action program. In the current regulation, this disclosure is only suggested. Requiring this disclosure will increase transparency, making it clear to applicants, employees, OFCCP, and other interested parties which individual(s) are

responsible for the implementation of the contractor's affirmative action program.

Paragraph (j) requires that the contractor train those individuals who implement the personnel decisions pursuant to its affirmative action program. The proposed regulation specifies the topics that shall be included in the contractor's training: The benefits of employing protected veterans; appropriate sensitivity toward protected veteran recruits, applicants and employees; and the legal responsibilities of the contractor and its agents regarding protected veterans generally and special disabled veterans specifically, such as reasonable accommodation for qualified disabled veterans and the related rights and responsibilities of the contractor and protected veterans. Training on these issues will facilitate a greater understanding of the purpose of the affirmative action plan among decision makers for the contractor, and will enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. The proposed regulation would also require that the contractor record which of its personnel receive this training, when they receive it, and the person(s) who administer(s) the training, and maintain these records, along with all written or electronic training materials used, in accordance with the recordkeeping requirements of § 60–250.80. Again, this will allow for a more effective review by the contractor and OFCCP to ensure the affirmative action obligations of this paragraph are being met.

The proposed regulation adds a new paragraph (k) requiring that the contractor maintain several quantitative measurements and comparisons regarding protected veterans who have been referred by state employment services, have applied for positions with the contractor, and/or have been hired by the contractor. The impetus behind this new section is that, as stated in the discussion of § 60–250.44(a), no structured data regarding the number of protected veterans who are referred for or apply for jobs with Federal contractors is currently maintained. This absence of data makes it nearly impossible for the contractor and OFCCP to perform even rudimentary evaluations of the availability of protected veterans in the workforce, or to make any quantitative assessments of how effective contractor outreach and recruitment efforts have been in attracting protected veteran candidates. The proposed regulations provide for the collection of referral data (*see* § 60–250.5, paragraph 5 of the EO clause), as well as applicant data (*see* § 60–250.42(a)). Hiring data is already maintained by the contractor in its VETS–100 forms, a requirement which is carried over into this proposal. Accordingly, paragraph (k) requires that the contractor document and maintain the following information: (1) For referral data, the total number of referrals, the number of priority referrals of protected veterans, and the "referral ratio" of referred protected veterans to total referrals; (2) for applicant data, the total number of applicants for employment, the number of applicants who are known protected veterans, and the "applicant ratio" of protected veteran applicants to total applicants; (3) for hiring data, the total number of people hired, the number of protected veterans hired, and the "hiring ratio" of protected veteran hires to total hires; and (4) the total number of job openings, the number of jobs that are filled, and the "job fill ratio" of job openings to job openings filled. The proposed regulation requires that the contractor must document these measurements on an annual basis, and maintain records of them for five (5) years. These basic measurements will provide the contractor and OFCCP with important information that does not currently exist. This will aid the contractor in evaluating and tailoring its recruitment and outreach efforts and in establishing hiring benchmarks as set forth in the discussion of the proposed § 60–250.45, *infra.*

Finally, the proposed regulation replaces the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)," with the term "protected veteran" in paragraphs (a), (a)(2), (a)(3), (b), (e), (f), (f)(1), (f)(3), (f)(4), (f)(5), (f)(7), (f)(8), (g), (g)(2)(ii), (g)(2)(vii), and (h)(1)(iv), for the reasons stated in the discussion of § 60–250.2. The proposed regulation also replaces the terms "Vietnam Era Veterans' Readjustment Assistance Act of 1974" or "VEVRAA" with the term "Section 4212" throughout this section, for the reasons stated in the discussion of § 60–250.1.

Section 60–250.45 Contractor-Established Benchmarks for Hiring

The proposed regulation would require for the first time that the contractor establish annual hiring benchmarks, expressed as the percentage of total hires who are protected veterans that the contractor seeks to hire in the following year. As stated in paragraph (a) of the proposed rule and set forth more fully below, these hiring benchmarks would be established by the contractor using existing data on veteran availability, while also allowing the contractor to take into account other factors unique to its establishment that would tend to affect the availability determination.

While the Bureau of Labor Statistics (BLS) and Census Bureau (Census) do not tabulate data pertaining to the specific classifications of protected veterans under part 60–250, there are other existing data sources that are instructive. For instance, BLS tabulates statewide data on the number of veterans in the civilian labor force and the unemployment rate of veterans in the labor force, and national data on the number of veterans with a service-related disability. The Department's Veterans Employment and Training Service collects statewide data over a rolling, four quarter period of individuals who "participated" in the state employment services. The breakdown of this data includes the number of overall veterans, the number of overall veterans who are identified as being unemployed, and the number of veterans in some, although not all, of the specific categories of veterans protected by part 60–250.

Accordingly, the proposed rule would require that the contractor consult a number of different sources of information, which will be made easily available to the contractor, in establishing hiring benchmarks. As set forth in the proposed paragraph (b), these sources would include: (1) The percentage of veterans in the civilian labor force, tabulated by BLS and which will be published on OFCCP's Web site; (2) the raw number of veterans who were participants in the state employment service in the State where the contractor's establishment is located, which will also be published on OFCCP's Web site; (3) the referral ratio, applicant ratio, and hiring ratios as expressed in the proposed § 60–250.44(k); (4) the contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as expressed in the proposed § 60–250.44(f)(3); and (5) any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans. The contractor would be required to consider and document each of these factors, *see* proposed paragraph (c) of this section, but would be given discretion to weigh the various factors in a manner that is reasonable in light of the contractor's unique circumstances. We believe that this proposal creates a practical and workable mechanism for establishing

benchmarks that will allow the contractor to measure its success in recruiting and employing protected veterans. However, we seek input from stakeholders on this proposal and any additional measures that would make these benchmarks more meaningful, as well as any other measures that would otherwise increase employment opportunities for veterans.

Subpart D—General Enforcement and Complaint Procedures

Section 60–250.60 Compliance Evaluations

This section details the form and scope of the compliance evaluations of the contractor's affirmative action programs conducted by OFCCP. The proposed rule contains several changes to this section.

First, the proposal adds a sentence to paragraph (a)(1)(i) regarding the temporal scope of desk audits performed by OFCCP. This language merely clarifies OFCCP's long-standing policy that, in order to fully investigate and analyze the scope of potential violations, OFCCP may need to examine information after the date of the scheduling letter in order to determine, for instance, if violations are continuing or have been remedied. The language does not represent a change in policy or new contractor obligations.

Second, the current paragraph (a)(2) relating to the off-site review of records incorrectly refers to the "requirements of the Executive Order and its regulations;" the proposed rule corrects this to read the "requirements of Section 4212 and its regulations."

Third, the proposed rule contains a change to the nature of document production under paragraph (a)(3). This paragraph, which specifies a "compliance check" as an investigative procedure OFCCP can use to monitor a contractor's recordkeeping, currently states that the contractor may provide relevant documents either on-site or off-site "at the contractor's option." The proposed regulation eliminates this quoted clause and provides that OFCCP may request that the documents to be provided either on-site or off-site.

Fourth, the proposed rule contains a minor change to the scope of "focused reviews" as set forth in paragraph (a)(4). Focused reviews allow OFCCP to target one or more components of a contractor's organization or employment practices, rather than conducting a more comprehensive compliance review of an entire organization. Currently, the regulations provide that these focused reviews are "on-site," meaning they must take place at the contractor's place of business. The increased use of electronic records that are easily accessible from multiple locations affords compliance officers greater flexibility in conducting focused reviews. Therefore, we propose to delete the word "on-site" from this section, which will allow compliance officers to conduct reviews of relevant materials at any appropriate location.

Fifth, the proposed rule contains a new paragraph (d) which details a new procedure for pre-award compliance evaluation under Section 4212. This proposed rule is based on the pre-award compliance procedure contained in the Executive Order regulations (*see* 41 CFR 60–1.20(d)).

Finally, the proposed regulation replaces the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)," with the term "protected veteran" in paragraph (a) for the reasons stated in the discussion of § 60–250.2.

Section 60–250.61 Complaint Procedures

This section outlines the manner in which applicants or employees who are protected veterans may file complaints alleging violations of Section 4212 or its regulations.

The proposed rule replaces the term "Deputy Assistant Secretary" with the term "Director" in paragraphs (e)(1), (e)(2), and (e)(3), for the reasons set forth in the discussion of § 60–250.2. The proposed regulation also replaces the term "state employment security agency" in paragraph (a) with the term "employment service delivery system," for the reasons set forth in the discussion of § 60–250.5. Finally, the proposed regulation replaces the phrase "special disabled veteran(s), veteran of the Vietnam era, recently separated veteran(s), or other protected veteran(s)" with the term "protected veteran" in paragraph (b)(iii), for the reasons stated in the discussion of § 60–250.2.

Section 60–250.64 Show Cause Notice

This section describes the manner in which OFCCP notifies a contractor when it believes the contractor has violated Section 4212 or its regulations. The proposed rule replaces the term "Deputy Assistant Secretary" in this section with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.65 Enforcement Proceedings

This section describes the procedures for formal enforcement proceedings against a contractor in the event OFCCP finds a violation of Section 4212 or its regulations that has not been corrected. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (a)(2) of this section with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.66 Sanctions and Penalties

This section discusses the types of sanctions and penalties that may be assessed against a contractor if it is found to have violated Section 4212 or its regulations. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (a) of this section with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.67 Notification of Agencies

This section provides that agency heads will be notified if any contractors are debarred. The proposed rule replaces the term "Deputy Assistant Secretary" with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.68 Reinstatement of Ineligible Contractors

This section outlines the process by which a contractor that has been debarred may apply for reinstatement. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraphs (a) and (b) of this section with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.69 Intimidation and Interference

This section forbids the contractor from retaliating against individuals who have engaged in or may engage in certain specified protected activities, and describes the contractor's affirmative obligations in preventing retaliation. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (b) of this section with the term "Director," for the reasons set forth in the discussion of § 60–250.2. The proposed rule also replaces the phrase "special disabled veteran(s), veterans of the Vietnam era, recently separated veteran(s), or other protected veteran(s)," with the term "protected veteran" in paragraphs (a)(2) and (a)(3) for the reasons stated in the discussion of § 60–250.2.

Subpart E—Ancillary Matters

Section 60–250.80 Recordkeeping

This section describes the recordkeeping requirements that apply to the contractor under Section 4212,

and the consequences for the failure to preserve records in accordance with these requirements. The proposed regulation adds a sentence at the end of paragraph (a) of this section clarifying that the newly proposed recordkeeping requirements set forth in §§ 250.44(f)(4) (linkage agreements and other outreach and recruiting efforts), 250.44(k) (collection of referral, applicant and hire data), 250.45(c) (criteria and conclusions regarding contractor established hiring benchmarks), and Paragraph 5 of the equal opportunity clause in § 60–250.5(a) (referral data) must be maintained for five (5) years, for the reasons set forth in the discussion of those sections, *supra.*

Section 60–250.81 Access to Records

This section describes a contractor's obligations to permit access to OFCCP when conducting compliance evaluations and complaint investigations. The proposed rule adds some language clarifying the contractor's obligations, particularly in light of the increased use of electronically stored records. First, the proposed rule adds a sentence requiring the contractor to provide off-site access to materials if requested by OFCCP investigators or officials as part of an evaluation or investigation. This change reflects the increased use of electronic records from multiple locations, and accordingly gives OFCCP greater flexibility in conducting its evaluations and investigations. Second, the proposed rule requires that the contractor specify all formats (including specific electronic formats) in which its records are available, and produce records to OFCCP in the format selected by OFCCP. This change is proposed in light of numerous instances in which OFCCP has conducted extensive review and analysis of a contractor's records only to find subsequently that the records were available in more readily accessible formats. Specifying the variety of available formats upon request, and providing records to OFCCP in the format it selects, will facilitate a more efficient investigation process.

Section 60–250.83 Rulings and Interpretations

This section establishes that rulings and interpretations of Section 4212 will be made by the Director of OFCCP. The proposed rule replaces the term "Deputy Assistant Secretary" with the term "Director," for the reasons set forth in the discussion of § 60–250.2.

Section 60–250.84 Responsibilities of Local Employment Service Offices

This section outlines the responsibilities of local employment service offices, including the obligation to give priority referral to protected veterans for jobs listed by a Federal contractor. The proposed rule replaces the phrase "special disabled veteran(s), veteran(s) of the Vietnam era, recently separated veteran(s), or other protected veteran(s)," with the term "protected veteran" for the reasons stated in the discussion of § 60–250.2.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The proposed rule includes four changes to Appendix A which would mandate activities that previously were only suggested. These changes primarily reflect proposed revisions to §§ 60–250.2 and 60–250.42(d), *supra,* that would alter the contractor's responsibilities.

First, in the third sentence of paragraph 2, we propose changing the language to reflect the change to § 60–250.42(d) requiring a contractor to seek the advice of special disabled veterans in providing reasonable accommodation. Second, in the last sentence of Paragraph 4, the proposed rule is changed to require that special disabled veterans, in the event an accommodation would constitute an undue hardship for the contractor, be given the option of providing the accommodation or paying the portion of the cost that constitutes the undue hardship for the contractor. Third, in the fourth sentence of paragraph 5, we propose changing the language to require a contractor to seek the advice of special disabled veterans in providing reasonable accommodation. Finally, in the last sentence of paragraph 9, the proposed rule is changed to require that a contractor must consider the totality of the circumstances when determining what constitutes a "reasonable amount of time" in the context of available vacant positions.

Additionally, the proposed rule changes the reference to "§ 60–250.2(o)" in paragraph 1 of Appendix A to "§ 60–250.2(r)," and changes the references to "§ 60–250.2(t)" in paragraphs 5 and 8 of Appendix A to "§ 60–250.2(s)." This is to reflect the revised alphabetical structure of the definitions section in the proposed rule, as discussed in § 60–250.2, above. The proposed regulation also replaces the term "VEVRAA" with "Section 4212" for the reasons set forth in the discussion of § 60–250.1.

Appendix B to Part 60–250—Sample Invitation to Self-Identify

The proposed rule amends Appendix B consistent with the proposed changes to the self-identification regulation found at § 60–250.42. The first paragraph is amended simply to include detailed definitions of the four types of classifications of protected veterans. These definitions are to be included in a contractor's invitation to self-identify either at the pre-offer (proposed § 60–250.42(a)) or post-offer (proposed § 60–250.42(b)). We propose this change to clarify for the contractor and for applicants exactly which categories of veterans are protected by part 60–250.

The second paragraph of the Appendix contains the suggested model language for the self-identification of protected veterans. The current language has models to be used if they are being distributed to non-special disabled protected veterans exclusively, special disabled veterans exclusively, or to all protected veterans. In keeping with the proposed changes in § 60–250.42, we propose amending the second paragraph to include two models: one that will be given to all applicants at the pre-offer stage, and one that will be given at the post-offer stage to all individuals who have been offered employment by the contractor. For the pre-offer stage, the invitation refers to the definitions for each of the classifications of protected veterans and invites applicants to identify if they belong to any one (or more) of them generally. It does not provide for individuals to self-identify as a particular type of protected veteran (*e.g.,* a qualified special disabled veteran). For the post-offer stage, the invitation again refers to the definitions for each of the classifications of protected veteran and then invites applicants to indicate to which specific classifications of protected veteran they belong.

For both the pre-offer and post-offer invitations, we have proposed new language explaining to applicants that the information is being requested in order to measure the contractor's outreach and recruitment efforts required under part 60–250. This replaces the current language which only inquires whether individuals would like to be included under the contractor's affirmative action program. The post-offer invitation in Paragraph 2 also incorporates the language in the current paragraph 7 of the Appendix, which requests that special disabled veterans describe possible workplace accommodations, with the exception of replacing "elimination of certain duties relating to the job" with "changes in the

way the job is customarily performed." We propose this change merely to clarify the nature of the interactive process, and to eliminate any confusion that might exist regarding the existing language that "elimination of certain duties" could be read to include eliminating essential functions of the job. It is a change in verbiage only, and does not alter the substantive obligations of the contractor or applicant in the interactive process.

Finally, the proposed regulation also replaces the term "VEVRAA" with "Section 4212" for the reasons set forth in the discussion of § 60–250.1.

Appendix C to Part 60–250—Review of Personnel Processes

The proposed rule deletes Appendix C and moves its content, with some edits, to § 60–250.44(b). *See* the Section-by-Section Analysis of § 60–250.44, *supra,* for further discussion.

41 CFR Part 60–300

Subpart A—Preliminary Matters, Equal Opportunity Clause

Section 60–300.1 Purpose, Applicability and Construction

Paragraph (a) of the current rule sets forth the scope of Section 4212 and the purpose of its implementing regulations. We propose a few minor changes to this section. First, we propose deleting the reference to the "Vietnam Era Veterans' Readjustment Assistance Act of 1974" or "VEVRAA," and replacing it, in this section and throughout the regulation, with "Section 4212". Referring to the operative law as "VEVRAA" is not entirely accurate, as Section 4212, where VEVRAA was initially codified, has been amended several times since VEVRAA was passed—most recently by the Jobs for Veterans Act of 2002 (JVA), which amended the dollar amount for contract coverage and the categories of protected veterans, and subsequently led to the promulgation of the regulations found at part 60–300. One of the specific amendments made by the JVA was that "Vietnam Era veterans" was no longer a distinct protected category.[1] Therefore, there is concern that continued use of the term "VEVRAA" perpetuates confusion about which classifications of veterans are covered under the existing law. Referring to the law as "Section 4212" clarifies that we are referring to the law as amended. This is more accurate than "VEVRAA" and should alleviate any further confusion.

Second, paragraph (a) discusses the contractor's affirmative action obligations, but does not discuss another primary element of the regulations: The prohibition of discrimination against veterans protected under Section 4212. Accordingly, the proposed regulation adds language to the first sentence of paragraph (a) to include this important element.

Additionally, the proposed rule makes two minor language changes in order to comport with some of the newly proposed definitions in § 60–300.2. First, the term "other protected veterans" is amended to read "active duty wartime or campaign badge veterans," for the reasons detailed in the Section-by-Section Analysis of § 60–300.2. Second, all references to "covered veterans" is amended to read "protected veterans," due to the inclusion of a definition for "protected veteran" in the proposed § 60–300.2.

Section 60–300.2 Definitions

The proposed rule incorporates the vast majority of the existing definitions contained in existing § 60–300.2 without change. However, OFCCP proposes some changes to the substance and structure of this section, as set forth below.

With regard to the structure of this section, the current rule lists the definitions in order of subject matter. However, for those who are unfamiliar with the regulations, this organizational structure makes it difficult to locate specific terms within this section. The proposed rule reorders the defined terms in alphabetical order, and then assigns each term a lettered subparagraph heading. This modified structure is proposed for ease of reference, and to facilitate citation to specific definitions. However, because of this reordering, the citation to specific terms may be different in the proposed rule than it is currently. For instance, the term "contract," which is § 60–300.2(h) in the current regulations, is § 60–300.2(e) in the proposed regulation.

With regard to substantive changes, the proposed rule first clarifies the definitions pertaining to the classifications of veterans who are protected under part 60–300. The Jobs for Veterans Act (JVA), which amended Section 4212 in 2002, defined the classes of veterans protected by part 60–300. The current classifications of protected veterans under the JVA, reflected in the part 60–300 regulation, are as follows: (1) Disabled veterans; (2) veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized; (3) veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (known generally as "Armed Forces service medal veteran"); and (4) recently separated veterans. Currently, § 60–300.2 includes specific definitions for "disabled veterans," "recently separated veterans," and "Armed Forces service medal veterans." *See* 41 CFR 60–300.2(n), (q), (r). It does not contain a specific definition for "veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized." Instead, this classification is included within the current "other protected veteran" definition. *See* 41 CFR 60–300.2(p). This anomaly has caused significant confusion, as many individuals who are unfamiliar with the regulations believe that the "other protected veteran" category is a "catch-all" that includes all veterans. To address this issue, the proposed rule replaces the "other protected veteran" definition that is contained in the current regulation with the more precise classification language "active duty wartime or campaign badge veteran" that appears in the statute. This replacement will not change the scope of coverage. Instead, individuals currently covered under the "other protected veteran" classification as defined in the current rule will still be covered, but will fall under the more accurate "active duty wartime or campaign badge veteran" classification. It should be noted that this proposed rule does not revise the VETS–100A form, which is administered by the Department's Veterans' Employment and Training Service (VETS) and requires the contractor to tabulate the number of employees and new hires in each of the component categories of protected veterans under Section 4212. The VETS–100A form currently maintains the use of the "other protected veteran" classification. After the final rule is published, OFCCP will work with VETS to conform the VETS–100 form to the new Section 4212 regulations. The public will be given an opportunity to comment on these revisions, which must be approved by the Office of Management and Budget under the Paperwork Reduction Act prior to becoming effective.

[1] However, the vast majority of individuals who fell under the "Vietnam Era veteran" category of part 60–250 would fall under one of the categories of protected veterans in part 60–300.

The current rule also lacks a clear, overarching definition of "protected veteran," under part 60–300. Although it discusses the responsibilities of a contractor to all categories of protected veterans collectively, it also enumerates each classification of protected veteran several times throughout the regulation. Accordingly, the proposed rule includes a new definition of "protected veteran," which includes all four classifications of protected veterans separately identified and defined in 60–300.2. This new term would replace the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)" used throughout the current rule to refer to these protected veterans in the aggregate. The individual categories of protected veterans continue to be separately identified in the first paragraph of the equal opportunity clause in § 60–300.5 to permit the identification of protected veterans in the context of the contract (*see* Section-by-Section Analysis of § 60–300.5, *infra,* for further explanation).

The proposed rule also replaces the term "Deputy Assistant Secretary," found currently at § 60–300.2(d), with "Director." The current § 60–300.2(d) defines "Deputy Assistant Secretary" as "the Deputy Assistant Secretary for Federal Contract Compliance of the United States Department of Labor, or his or her designee." Following the elimination of the Employment Standards Administration in November 2009, the head of OFCCP now has the title of Director. Accordingly, the proposed rule reflects this change, which will be made throughout part 60–300.

The proposed rule also adds a definition of "linkage agreement," now described in the OFCCP Federal Contract Compliance Manual. We propose adding a definition of "linkage agreement" to the regulations for clarity. The proposed regulation defines "*linkage agreement*" to mean an agreement describing the connection between the contractor and appropriate recruitment and/or training sources. A linkage agreement is to be used by the contractor as a source of potential applicants to the covered groups in which the contractor is interested. The contractor's representative that signs the linkage agreement should be the company official responsible for the contractor's affirmative action program and/or has hiring authority.

Section 60–300.3 [Reserved]

Section 60–300.4 Coverage and Waivers

The proposed regulation replaces the term "Deputy Assistant Secretary," found in paragraphs (b)(1), (b)(2), and (b)(3) of this section, with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.5 Equal Opportunity Clause

Paragraph (a) contains the equal opportunity (EO) clause that must be included in all covered Government contracts and subcontracts. The proposed regulation includes numerous substantive changes.

First, the proposed regulation adds additional language to subparagraph 2 of the EO clause in this section clarifying the contractor's responsibility to "list" jobs in the context of mandatory listing requirements. The mandatory job listing requirement discussed in paragraphs 2 and 3 of the EO clause mandates that the contractor list all employment openings for the duration of the contract with an "appropriate employment service delivery system," (hereinafter "employment service"). This listing not only provides a source for veterans to access job listings, but also allows the employment service to provide priority referrals of veterans for the Federal contractor jobs listed with the employment service. Following the publication of the most recent revisions to part 60–300 regulations, questions were raised as to the manner in which a contractor must provide information to an employment service in order to satisfy the requirement. There have been many instances in which a contractor provided job listings to an employment service in a manner or format that was unusable to that employment service. In order to satisfy the listing requirement, the contractor must provide job vacancy information to the appropriate employment service *in the manner that the employment service requires* in order to include the job in their database so that they may provide priority referral of veterans. OFCCP has long interpreted the listing responsibilities of a contractor in this manner. This change clarifies OFCCP's policy.

The proposed regulation also adds a sentence to the end of paragraph 2 clarifying that, for any contractor who utilizes a privately-run job service or exchange to comply with its mandatory listing obligation, the information is subsequently must be provided to the appropriate employment service in the manner that the employment service requires. This clarification is proposed for two reasons. First, contractors' use of private job listing services has increased following the elimination of the Department's America's Job Bank listing service. Second, we have received feedback from officials in state employment services that some contractors provide job listing information to these private job listing services assuming that they have then fulfilled their listing obligations, but that the private job listing services do not always provide the information in the requisite in order to list the job opening in its database and provide priority referral of protected veterans.

The proposed regulations also add further detail to paragraph 4 of the EO clause with respect to the specific information the contractor must provide to state employment services in each state where the contractor has establishments. The current regulations require that the contractor provide the appropriate state employment service with the name and location of each of the contractor's hiring locations. The proposed regulations require that the contractor provide the state employment service with the following additional information: (1) Its status as a Federal contractor; (2) the contact information for the contractor hiring official at each location in the state; and (3) its request for priority referrals of protected veterans for job openings at all its locations within the state. This information shall be updated on an annual basis. These three additional items are proposed in light of feedback received from state employment services that there is no centralized list of Federal contractors that they can consult in order to determine if a listing employer is a Federal contractor. If the Federal contractor does not specifically identify itself as such to the state employment service and further identify the hiring official, the state employment service often will not know if it should be providing priority referrals of protected veterans as required by § 60–300.84 or who to contact. Requiring the Federal contractor to provide this additional information will facilitate the priority referral process. The proposed regulation also adds a sentence clarifying that, if the contractor uses any outside job search companies (such as a temporary employment agency) to assist in its hiring, the contractor must also provide the state employment service with the contact information for these outside job search companies. Due to the widespread use of these outside job search companies, this proposed language is included to ensure that the state employment service has the ability

to contact any and all individuals in any way responsible for a contractor's hiring in order to effectively carry out its obligations under § 60–300.84. Finally, the proposed regulation replaces the terms "state workforce agency" and "state agency," found in a few instances in this paragraph, with the term "employment service delivery system." The terms are interchangeable as used in this paragraph, but the latter term is already specifically defined in § 60–300.2, so we use it instead.

The proposed regulation adds a new paragraph 5 to the EO clause which requires the contractor to maintain records, on an annual basis, of the total number of referrals it receives from state employment services, the number of priority referrals of protected veterans it receives, and the ratio of protected veteran referrals to total referrals. This is one of a few new data collection requirements set forth in this NPRM that are proposed in order to give the contractor (as well as OFCCP, in the course of compliance evaluations) a quantifiable measure of the availability of protected veterans in the workforce. The contractor would be required to maintain these records on the number of referrals for five (5) years. We propose a five year record retention requirement for multiple reasons. First, because the proposed rule anticipates that the contractor will use the referral data in setting annual hiring benchmarks (*see* Section-by-Section discussion in 300.45, *infra*) we wanted to ensure that the contractor has sufficient historical data on the number of referrals it has received in years past to meaningfully inform the benchmarks it sets going forward. Further, because the proposed rule anticipates that the contractor will review its outreach efforts and adjust them to maximize recruitment of protected veterans (*see* Section-by-Section discussion in 300.44(f)(3), *infra*), we wanted to ensure that the contractor has sufficient historical data to recognize meaningful trends in recruitment and, subsequently, to identify effective recruitment efforts that corresponded with time periods of increased recruitment of protected veterans. If the contractor had fewer years of referral data on hand, it is less likely that the data would provide meaningful assistance to the contractor in these respects.

In paragraph 10 of the EO clause (currently paragraph 9; renumbered due to the newly proposed paragraph 5, above), we propose two revisions. The third sentence of this paragraph is revised to clarify the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. It also revises the parenthetical at the end of the sentence, replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled individual" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notice themselves. The proposed regulations would also add the following sentences to the end of proposed paragraph 10 (current paragraph 9) of the EO clause: "With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees are otherwise able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application." The addition of these sentences is in response to the increased use of telecommuting and other work arrangements that do not include a physical office setting, as well as Internet-based application processes in which applicants never enter a contractor's physical office. These revisions therefore would permit equivalent access to the required notices for these employees and applicants.

For paragraph 11, which refers to the contractor's obligation to notify labor organizations or other workers' representatives about its obligations under Section 4212, we propose adding language clarifying that these obligations include non-discrimination, in addition to affirmative action. The current paragraph 11 does not specifically mention the contractor's non-discrimination obligations.

The proposed regulations add a new paragraph 13 to the EO clause which would require the contractor to state and thereby affirm in solicitations and advertisements that it is an equal employment opportunity employer of veterans protected under Section 4212. A comparable clause exists in the equal opportunity clause of the Executive Order 11246 regulations, *see* 41 CFR 60–1.4(a)(2), describing the protected classes under that Order. This proposed addition ensures consistency between the regulations and aids in communicating the contractor's EEO responsibilities to job seekers.

Finally, the proposed regulations amend paragraphs (d) and (e) of this section to require that the entire equal opportunity clause be included verbatim in Federal contracts. This is to ensure that the contractor and subcontractor read and understand the language in this clause. Feedback from town hall meetings and webinars conducted by OFCCP prior to the publication of this proposed rule indicated that some contractors, and especially subcontractors, are not aware of their EO Clause responsibilities. In the case of subcontractors, they often rely on the prime contractors to inform them of their nondiscrimination and affirmative action program obligations. If the EO Clause is not written in full, subcontractors are disadvantaged and often unaware of their statutory obligations until audited by OFCCP. Particularly given the emphasis the administration and Congress have placed on veterans' employment issues, we believe it is important to take whatever steps will inform contractors and subcontractors of the obligations under the EO Clause. OFCCP solicits public comment on this proposal and any other steps that would increase the contractor community's awareness of its obligations.

The proposed regulation also replaces the term "Deputy Assistant Secretary," found in paragraph (f) of this section and in paragraphs 9 and 11 of the EO clause, with the term "Director," for the reasons set forth in the discussion of § 60–300.2. It also replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)" found in the second sentence of Paragraph 1 and in Paragraph 9 of the EO clause, with the term "protected veteran," for the reasons set forth in the discussion of § 60–300.2. This phrase remains in the first sentence of Paragraph 1 (with "active duty wartime or campaign badge veteran" replacing "other protected veteran," as discussed in § 60–300.2, *supra*) of the EO clause so it is clear to those reading the clause independently from the rest of the regulation precisely which classifications of veterans are protected by this part of the Section 4212 regulations. Additionally, to ensure that the contractor is aware of the appropriate definitions, we propose adding a footnote to the title of the EO Clause stating explicitly that the definitions set forth in 41 CFR 60–300.2 apply to the EO Clause and are

incorporated by reference. Finally, all references to "VEVRAA" are replaced with the term "Section 4212," for the reasons set forth in the discussion of § 60–300.1.

Subpart B—Discrimination Prohibited

Section 60–300.21 Prohibitions

This section of the rule defines and addresses prohibited discriminatory conduct under Section 4212. The proposed rule includes an additional clause at the end of paragraph (f)(3), qualifying that an individual who rejects a reasonable accommodation made by the contractor may still be considered a qualified disabled veteran if the individual subsequently provides and/or pays for a reasonable accommodation. For instance, if a veteran knows that a certain piece of equipment that he or she already owns will allow him or her to perform the functions of the job, and that equipment would represent an undue burden for the contractor to provide, the veteran would be able to provide his or her own equipment and still be considered a qualified disabled veteran. We propose inserting this language to ensure consistency with the requirement in paragraph 4 of Appendix A to the proposed rule, which requires that individuals be allowed to pay for or provide their own accommodation if providing the accommodation for the employee would represent an undue burden to the contractor.

The proposed revisions also include minor language changes, replacing the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)" found in paragraphs (a), (b), (c)(1), (d)(1), (e), (g)(1), and (i) with the term "protected veteran," for the reasons set forth in the discussion of § 60–300.2, above.

Section 60–300.22 Direct Threat Defense

The proposed revisions change "§ 60–300.2(w)" in the parenthetical at the end of this section to "§ 60–300.2(g)," in light of restructuring the Definitions section in alphabetical order, as discussed in § 60–300.2, above.

Subpart C—Affirmative Action Program

Section 60–300.40 Applicability of the Affirmative Action Program Requirement

This section sets forth which contractors are required to maintain an affirmative action program, and the general timing requirements for its creation and submission to OFCCP. We propose a minor clarification to paragraph (c) of this section, specifying that the affirmative action program shall be reviewed and updated annually "by the official designated by the contractor pursuant to § 60–300.44(i)." While this is the intent of the existing language, the proposal clarifies this intention and ensures that company officials who are knowledgeable of the contractor's affirmative action activities and obligations are reviewing the program.

Section 60–300.41 Availability of Affirmative Action Program

This section sets forth the manner by which the contractor must make its affirmative action programs available to employees for inspection, which includes the location and hours during which the program may be obtained. The proposed regulation adds a sentence at the end of this section requiring that, in instances where the contractor has employees who do not work at the contractor's physical establishment, the contractor shall inform these employees about the availability of the affirmative action program by means other than a posting at its establishment. This addition is proposed in light of the increased use of telecommuting and other flexible workplace arrangements.

Section 60–300.42 Invitation to Self-Identify

The proposed revisions of this section make significant, substantive changes to the contractor's responsibilities and the process through which applicants are invited to self-identify as a veteran protected under the part 60–300 regulations, particularly those set forth in paragraphs (a) and (b). As described more fully below, these changes are proposed in order to collect enhanced data pertaining to protected veterans, which will allow the contractor and OFCCP to identify and monitor the contractor's employment practices with respect to protected veterans.

The current regulation requires the contractor to invite applicants who are disabled veterans as defined in 60–300.2, to self-identify only after making an offer of employment, subject to two exceptions. *See* § 60–300.42(a). For all other veterans protected by part 60–300, the current regulation requires the contractor to invite such applicants to self-identify "before they begin [their] employment duties." *See* § 60–300.42(b).

The two exceptions to the prohibition on inviting disabled veterans to self-identify pre-offer contained in 41 CFR 300.42(a) would not change. The exceptions permit a contractor to invite disabled veterans to self-identify prior to making a job offer when: (1) The invitation is made while the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or (2) the invitation is made pursuant to a Federal, state or local law requiring affirmative action for disabled veterans. These two exceptions are identical to the exceptions to the prohibition on pre-offer disability-related inquiries contained in the implementing regulations for Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503). *See* 41 CFR 60–741.42. Consequently, under existing Section 4212 regulations, the contractor is permitted, although not required, to create employment programs targeting disabled veterans and inviting applicants to identify whether they are eligible for the program pre-offer. OFCCP is not proposing a change in this provision.

The proposed change requires the contractor to invite all applicants to self-identify as a "protected veteran" prior to the offer of employment. This proposed change would not seek the specific protected classification of protected veteran (disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran). The pre-offer invitation would not require protected veteran applicants to disclose their status as a protected veteran if they chose not to (*see* the proposed Sample Invitation to Self-Identify in Appendix B, *infra*). This new pre-offer self-identification step also would include the requirement, currently stated in paragraph (e) of this section, that the contractor maintain the pre-offer self-identification data and supply it to OFCCP upon request. Incorporating self-identification into the application process would allow the contractor, and subsequently OFCCP, to collect valuable, targeted data on the number of protected veterans who apply for Federal contractor positions. This data would enable the contractor and OFCCP to measure the effectiveness of the contractor's recruitment and affirmative action efforts over time. Moreover, the contractor and OFCCP will be better equipped to improve and refine successful and effective recruiting mechanisms, thereby increasing the number of applications from protected veterans. Additionally, this data will enable OFCCP to identify and promote successful recruitment and affirmative efforts taken by the contractor community.

Through the various outreach efforts to stakeholders OFCCP has conducted in advance of this NPRM, an issue has

been raised regarding the implementing regulations of Title I of the ADA and Section 503, which limit the extent to which employers may inquire about disabilities prior to an offer of employment. *See* 29 CFR 1630.13, 1630.14; 41 CFR 60–741.42. The concern is that requiring the contractor to invite applicants to self-identify as a protected veteran would violate the general prohibition against pre-offer disability-related inquiries because some protected veterans will be disabled veterans. This concern is misplaced, as the ADA and Section 503 regulations permit the contractor to conduct a pre-offer inquiry into disability status if it is "made pursuant to a Federal, state or local law requiring affirmative action for individuals with disabilities," such as Section 4212 or Section 503. Id.

However, while it would be legally permissible to do so, OFCCP is not proposing that the pre-offer self-identification identify the specific category of protected veteran for three primary reasons. First, given that the overall population of protected veterans is already relatively small, dividing the pool of protected veterans into smaller component classifications would tend to reduce the ability of the contractor to engage in meaningful data analysis of applicants, such as that proposed in § 60–300.44(h) and (k). Second, a protected veteran may fall into several categories of protected categories, which could create unnecessary complexity to data analysis. For example, the same individual could be a protected veteran because he or she is a disabled veteran, a recently separated veteran and an Armed Service medal veteran. Finally, at the pre-offer stage under the proposed rule the contractor's obligations would be the same with respect to each category of protected veteran, thus there is no apparent benefit to knowing the specific category of protected veteran to which an applicant belongs.

In addition to the pre-employment self-identification provisions in § 60–300.42(a) of the proposed rule, § 60–300.42(b) of the proposed rule requires the contractor to invite individuals, after the offer of employment is extended, to self-identify as a member of one or more of the four classifications of protected veterans under part 60–300. Thus, post-offer identification will enable the contractor to capture refined data pertaining to each classification of protected veterans, as set forth in the VETS–100A form, which the contractor is required to maintain and submit. As is currently the case, the post-offer self-identification as a disabled veteran would not require applicants to disclose the specific nature of their disability.

We propose to revise paragraph (c) of this section by deleting the second sentence of the parenthetical at the end of the paragraph. This sentence described the format of and rationale behind the current Appendix B, which has been substantially amended in light of the new self-identification procedures proposed herein. For the same reasons, we propose revising paragraph (d) of this section to reflect the newly proposed self-identification process in which applicants will only identify themselves as disabled veterans specifically after an offer of employment is made. Further, we propose revising paragraph (d) to require, rather than suggest, that the contractor seek the advice of the applicant regarding accommodation. Requiring this of the contractor will help initiate a robust interactive and collaborative process between the contractor and the employee or applicant to identify effective accommodations that will facilitate a disabled veteran's ability to perform the job. While the purpose of this requirement is to promote agreement between the contractor and employee or applicant regarding accommodations to be used, this proposed change would not require that, in the event that multiple reasonable accommodations exist, the contractor must utilize the reasonable accommodation preferred by the employee or applicant.

We also propose replacing the term "appropriate accommodation" in paragraph (d) with "reasonable accommodation." We have always interpreted "appropriate accommodation" in this paragraph as substantively identical to the term "reasonable accommodation." However, because "reasonable accommodation" is already defined in these regulations and has a more broadly used and accepted legal definition, we propose using it here to avoid any confusion. This language change does not alter the contractor's existing obligations.

Section 60–300.43 Affirmative Action Policy

This section outlines the contractor's non-discrimination and affirmative action obligations under Section 4212. We propose two minor revisions to this section.

First, we propose replacing the phrase "because of status as a" in this section to "against," in order to clarify that the non-discrimination requirements of Section 4212 are limited to protected veterans and that reverse discrimination claims may not be brought by individuals who do not fall under one of the categories of veterans protected by part 60–300. Second, we propose replacing the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," used twice in this section, with the term "protected veteran," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.44 Required Contents of Affirmative Action Programs

This section details the elements that the contractor's affirmative action programs must contain. These existing elements include: (1) An equal employment opportunity policy statement; (2) a comprehensive annual review of personnel processes; (3) a review of physical and mental job qualifications; (4) a statement that the contractor is committed to making reasonable accommodations for persons with physical and mental disabilities; (5) a statement that the contractor is committed to ensuring a harassment-free workplace for protected veterans; (6) external dissemination of the contractor's affirmative action policy, as well as outreach and recruitment efforts; (7) internal dissemination of the contractor's affirmative action policy to all of its employees; (8) development and maintenance of an audit and reporting system designed to evaluate affirmative action programs; and (9) training for all employees regarding the implementation of the affirmative action program.

The first substantive proposed revisions to this section focus on the contractor's policy statement as set forth in paragraph (a). The proposed regulation revises the second sentence to clarify the contractor's duty to provide notices of employee rights and contractor obligations in a manner that is accessible and understandable to persons with disabilities. It also revises the parenthetical at the end of the sentence, replacing the outdated suggestion of "hav[ing] the notice read to a visually disabled individual" as an accommodation with the suggestion to provide Braille, large print, or other versions that allow persons with disabilities to read the notice themselves. The proposed regulation also revises the third sentence of paragraph (a) regarding the content of the policy statement, replacing the inclusion of the "chief executive officer's attitude on the subject matter" with "chief executive officer's support for the affirmative action program." This proposed change is made to clarify the intent of including a statement from the contractor's CEO in the affirmative

action policy statement, which is to signal to the contractor's employees that support for the affirmative action program goes to the very top of the contractor's organization.

In paragraph (b), the proposed rule requires that the contractor must review its personnel processes on at least an annual basis to ensure that its obligations are being met. The current rule requires that the contractor review these processes "periodically". This standard is vague and subject to confusion. Indeed, OFCCP's efforts to enforce this requirement in recent years have been complicated by contractors' various, subjective interpretations of what constitutes "periodic" review. This proposal sets forth a clear, measurable and uniform standard that will be easily understood by the contractor and more easily enforced by OFCCP.

Further, the proposed revisions mandate certain specific steps that the contractor must take, at a minimum, in the review of its personnel processes. These specific steps are those currently set forth in Appendix C to the regulation. Appendix C currently suggests that the contractor: (1) Identify the vacancies and training programs for which protected veteran applicants and employees were considered; (2), provide a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations; and (3) describe the nature and type of accommodations for special disabled veterans who were selected for hire, promotion, or training programs. Previously, these steps were recommended as an appropriate set of procedures. OFCCP's enforcement efforts have found that many contractors do not follow these recommended steps, and that the documentation contractors maintain of the steps they do take are often not conducive to a meaningful review by the contractor or OFCCP, particularly in the event of employee/applicant complaints. Such a meaningful review has always been the goal of the requirements in paragraph (b), as it ensures that the contractor remains aware of and actively engages in its overall affirmative action obligations toward protected veterans. The proactive approach set forth in the current Appendix C would provide greater transparency between the contractor, its applicants/employees, and OFCCP as to the reasons for the contractor's personnel actions. Requiring that the contractor record the specific reasons for their personnel actions, and making them available to the employee or applicant upon request, would also aid them in clearly explaining their personnel actions to applicants and employees, which could subsequently reduce the number of complaints filed against contractors. Thus we propose requiring the contractor to take these steps outlined currently in Appendix C (which are incorporated into paragraph (b) in the proposed rule), and encourage the contractor to undertake any additional appropriate procedures to satisfy its affirmative action obligations.

The proposed paragraph (c) clarifies that all physical and mental job qualification standards must be reviewed and updated, as necessary, on an annual basis. As with paragraph (b), the current rule's requirement that the contractor review these standards "periodically" is vague and subject to confusion. OFCCP has concluded that contractors inconsistently interpreted what constitutes "periodic" review. The proposed change provides a clear, measurable, and uniform standard.

The proposed paragraph (c)(1) adds language requiring the contractor to document the results of its annual review of physical and mental job qualification standards. The regulation has long required this review to ensure that job qualification standards which tend to screen out disabled veterans are job-related and consistent with business necessity. The proposed change would merely require that the contractor document the review it has already been required to perform. It is anticipated that this documentation would list the physical and mental job qualifications for the job openings during a given AAP year—which should already be available from the contractor's job postings—and provide an explanation as to why each requirement is related to the job to which it corresponds. Documenting this review will ensure that the contractor critically analyzes its job requirements and proactively eliminates those that are not job-related. It will also allow OFCCP to conduct audits and investigations in a more thorough and efficient manner.

Paragraph (c)(3) currently provides that, as a defense to a claim by an individual that certain mental or physical qualifications are not job-related and consistent with business necessity, the contractor may assert that the individual poses a "direct threat" to the health or safety of the individual or others in the workplace. The definition of "direct threat" in these regulations spells out the criteria that the contractor must consider in determining whether a "direct threat" exists. The proposed paragraph (c)(3) would require the contractor to contemporaneously create a written statement of reasons supporting its belief that a direct threat exists, tracking the criteria set forth in the "direct threat" definition in these regulations, and maintain the written statement as set forth in the recordkeeping requirement in § 60–300.80. Once again, this is to ensure that the contractor's "direct threat" analysis—which is already required under these regulations, as well as regulations to Section 503 of the Rehabilitation Act and the Americans with Disabilities Act—is well-reasoned and available for review by OFCCP.

Finally, for both the proposed documenting requirements in paragraphs (c)(1) and (c)(3), the proposed regulation would require that the contractor treat the created documents as confidential medical records in accordance with § 60–300.23(d).

Perhaps the most significant substantive changes in the proposed rule address the scope of the contractor's recruitment efforts and the dissemination of its affirmative action policies described in paragraphs (f) and (g) of this section. While these two paragraphs generally require that the contractor engage in recruitment and disseminate its policies, the current rule recommends rather than requires the specific methods for carrying out these obligations.

The current paragraph (f) suggests a number of outreach and recruitment efforts that the contractor can undertake in order to increase the employment opportunities for protected veterans. *See* 41 CFR 60–300.44(f)(1). The proposed paragraph (f) requires that the contractor engage in a minimum number of outreach and recruitment efforts as described in proposed paragraph (f)(1). The proposed paragraph (f) also includes a list of additional outreach and recruitment efforts that are suggested (proposed paragraph (f)(2)), a new requirement that the contractor conduct self-assessments of their outreach and recruitment efforts (proposed paragraph (f)(3)), and a clarification of the contractor's recordkeeping obligation with regard to its outreach and recruitment efforts (proposed paragraph (f)(4)).

In the proposed paragraph (f)(1), the contractor would be required to engage in three outreach and recruitment efforts. First, the contractor would be required to enter into linkage agreements and establish ongoing relationships with the Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment. The statute already requires contractors and subcontractors to send their job listings

to the Local Veterans' Employment Representative in the local or state employment service office for listing and priority referral of protected veterans. The Local Veterans' Employment Representative is an existing government resource provided for veterans to help them find employment.

Second, the contractor would be required to enter into a linkage agreement with at least one of several other listed organizations and agencies for purposes of recruitment and developing training opportunities. The listed organizations and agencies are those that are listed in the current paragraph (f)(1), with one addition: the Department of Defense Transition Assistance Program (TAP), or any subsequent program that replaces TAP. This program is administered in part by the Department of Labor's Veterans' Employment and Training Service (VETS) in Family Services Offices or similar offices at military bases. (*See http://www.dol.gov/vets/programs/tap/tap_fs.htm*) According to the Department of Defense, there are 249 TAP offices in installations around the United States, and another 16 TAP offices located in installations abroad. The TAP was designed to "smooth the transition of military personnel and family members leaving active duty." The TAP includes employment workshops with the Department of Labor, and offers individualized employment assistance and training. It is currently required for all those serving in the Marine Corps, and is generally encouraged and supported by the other branches of the military. Accordingly, it provides an excellent existing source for identifying qualified protected veterans TAP is a validated multi-government agency program that assists separating veterans in finding employment, from resume writing to interview techniques to dressing for success. OFCCP is aware, however, that not all contractors are located near a military base or similar facility which provides TAP; therefore, a contractor may select another organization or agency from the list that is more conducive to its recruiting efforts.

Third, paragraph (f)(1) would also require that the contractor consult the Employer Resources section of the National Resource Directory, a partnership with an online collaboration (*http://www.nationalresourcedirectory.gov/employment/job_services_and_employment_resources*) among the Departments of Labor, Defense, and Veterans Affairs. New contractors and subcontractors often inquire about how they can find qualified protected veterans to comply with their AAP obligations. The National Resource Directory is a leading government Web site that provides prospective employers of veterans access to veterans' service organizations, existing job banks of veterans seeking employment, and other resources at the national, state and local levels. The NPRM gives contractors and subcontractors the flexibility to select any organization on the National Resource Directory for outreach and recruit purposes. Since this Web site is a great nationwide resource, any contractor would likely find it useful in fulfilling its affirmative action obligations, such as recruiting veterans. The contractor would be required to establish a linkage agreement with at least one of the many veterans' service organizations listed on the site (excluding organizations described in the previous paragraph) to facilitate referral of qualified protected veterans, as well as other related advice and technical assistance. We believe that these first two efforts that the proposed rule requires would assist the contractor in establishing a baseline level of contact with veteran and employment-related organizations, while providing the contractor with flexibility to establish linkage agreements with organizations that are most tailored to the contractor's hiring needs. Finally, the proposed paragraph (f)(1) would also require that the contractor send written notification of company policy related to affirmative action efforts to its subcontractors, including subcontracting vendors and suppliers, in order to request appropriate action on their parts and to publicize the contractor's commitment to affirmative action on behalf of protected veterans. While the proposed regulations would not require that the contractor send written notification to vendors and suppliers who are not subcontractors as defined by these regulations, such disclosure remains an encouraged activity, just as it is under the current regulation. *See* 41 CFR 60–300.44(f)(6)).

We believe that the required linkage agreements we propose in paragraph (f)(1) will greatly facilitate the contractor's efforts to attract qualified protected veteran applicants. We encourage comments from stakeholders regarding this proposal, particularly if stakeholders have information on recruitment sources not included in this proposal that might increase employment of protected veterans.

In paragraph (f)(2) of the proposed rule, we list a number of outreach and recruitment efforts that are suggested measures for increasing employment opportunities for protected veterans. The efforts listed in paragraph (f)(2) are largely identical to the efforts that are suggested in paragraphs (f)(2) through (f)(5) and (f)(7) through (f)(8) of the current rule. This includes: (1) Holding briefing sessions with representatives from recruiting resources; (2) incorporating recruitment efforts for protected veterans at educational institutions; (3) considering applicants who are known protected veterans for all available positions when the position applied for is unavailable; and (4) any other positive steps the contractor believes are necessary to attract qualified protected veterans, including contacts with any local veteran-related organizations.

Paragraph (f)(3) of the proposed rule would require the contractor, on an annual basis, to review the outreach and recruitment efforts it has undertaken over the previous twelve months and evaluate their effectiveness in identifying and recruiting qualified protected veterans, and document its review. Contractors that do not proactively monitor their outreach and recruitment efforts often lose opportunities to consider and hire qualified protected veterans for employment. This requirement will allow the contractor to look at its measurable accomplishments and reconsider unproductive methods. We believe requiring this on an annual basis strikes the proper balance between ensuring that adjustments to recruitment efforts are made on a timely basis if needed, while also ensuring that the contractor has enough data on existing recruitment efforts to be able to determine if adjustments need to be made.

We recognize that the "effectiveness" of an outreach or recruitment effort is not easily defined, and may include a number of factors that are unique to a particular contractor establishment. Generally speaking, a review of the efficacy of a contractor's efforts should include the number of protected veteran candidates each effort identifies. Recognizing that other unique and intangible characteristics may contribute to the assessment of the "effectiveness" of a given effort, the proposed regulation allows the contractor some flexibility in making this assessment. However, the proposed regulation requires that the contractor consider the numbers of protected veteran referrals, applicants, and hires for the current years and two previous years as criteria in evaluating its efforts, and document all other criteria that it uses to assess the effectiveness of its efforts, so that OFCCP compliance

officers are able to understand clearly the rationale behind the contractor's self-assessment. The contractor's conclusion as to the effectiveness of its outreach must be reasonable as determined by OFCCP in light of these regulations. The primary indicator of effectiveness is whether qualified veterans have been hired. Further, should the contractor determine that its efforts were not effective, the proposed rule requires the contractor to identify and implement one or more of the alternative efforts listed in proposed paragraphs (f)(1) and (f)(2) in order to fulfill its obligations. The general purpose of this self-assessment is to ensure that the contractor think critically about its recruitment and outreach efforts, identify and ascertain successful recruiting efforts, and modify its efforts to ensure that its obligations are being met.

Paragraph (f)(4) of the proposed rule would require that the contractor document its linkage agreements and the activities it undertakes in order to comply with paragraph (f), and retain these documents for a period of five (5) years. This requirement will enable the contractor and OFCCP to more effectively review recruitment and outreach efforts undertaken to ensure that the affirmative action obligations of paragraph (f) are satisfied.

Paragraph (g) of this section requires that the contractor develop internal procedures to communicate to its employees its obligation to engage in affirmative action efforts. The current paragraph (g)(2) contains several suggested methods by which the contractor may accomplish this. The proposed rule would mandate the following practices: (1) Include its affirmative action policy in its policy manual; (2) inform all applicants and employees of its affirmative action obligations; (3) conduct meetings with executive, management, and supervisory personnel to explain the intent of the policy and responsibility for its implementation; and (4) discuss the policy in orientation and management training programs. In addition, if the contractor is party to a collective bargaining agreement, then the proposed rule would require the contractor to meet with union officials and representatives to inform them about the policy and seek their cooperation. Other suggested elements in the current paragraph (g)(2) remain in the proposed rule at newly created paragraph (g)(3) as suggested additional dissemination efforts the contractor can make. This includes suggesting that the contractor use company newspapers, magazines, annual reports, handbooks, or other media to publicize its affirmative action obligations and feature protected veterans and their accomplishments. *See* current regulation at 41 CFR 60–300.44(g)(2)(iii), 60–300.44(g)(2)(vii); 60–300.44(g)(2)(viii).

As for the requirement to inform all applicants and employees of its affirmative action obligations (item (2) in the preceding paragraph), the proposed regulation would require that the contractor hold meetings with its employees at least once per year to discuss the contractor's affirmative action policies and to explain contractor and individual employee responsibilities under these policies. These could be traditional in-person meetings, or meetings facilitated by technology such as webinars or videoconferencing. It would also require that the contractor describe individual employee opportunities for advancement in furtherance of the contractor's affirmative action plan. Frequent establishment-wide training on affirmative action issues will facilitate a greater understanding of the purpose of the affirmative action plan among employees. This training will also enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. Finally, a newly proposed paragraph (g)(4) would require the contractor to document its activities in order to comply with paragraph (g), and retain these documents as records subject to the recordkeeping requirements of § 60–300.80. This will allow for a more effective review by the contractor and OFCCP to ensure that the affirmative action obligations of paragraph (g) are being met.

Paragraph (h) of this section details the contractor's responsibilities in designing and implementing an audit and reporting system for its affirmative action program, including the specific computations and comparisons that are part of the audit. The proposed regulations add a new paragraph (h)(1)(vi) requiring the contractor to document the actions taken to comply with paragraphs (h)(1)(i)–(v), and maintain such documents as records subject to the recordkeeping requirements of § 60–300.80. Again, this will allow for a more effective review by the contractor and OFCCP to ensure the affirmative action obligations of this paragraph are being met.

The only substantive proposed change in paragraph (i) requires that the identity of the officials responsible for a contractor's affirmative action activities must appear on all internal and external communications regarding the contractor's affirmative action program. In the current regulation, this disclosure is only suggested. Requiring this disclosure will increase transparency, making it clear to applicants, employees, OFCCP, and other interested parties which individual(s) are responsible for the implementation of the contractor's affirmative action program.

Paragraph (j) requires that the contractor train those individuals who implement the personnel decisions pursuant to its affirmative action program. The proposed regulation specifies the specific topics that shall be included in the contractor's training: the benefits of employing protected veterans; appropriate sensitivity toward protected veteran recruits, applicants and employees; and the legal responsibilities of the contractor and its agents regarding protected veterans generally and disabled veterans specifically, such as reasonable accommodation for qualified disabled veterans and the related rights and responsibilities of the contractor and protected veterans. Training on these issues will facilitate a greater understanding of the purpose of the affirmative action plan among decision makers for the contractor, and will enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. The proposed regulation would also require that the contractor record which of its personnel receive this training, when they receive it, and the person(s) who administer(s) the training, and maintain these records, along with all written or electronic training materials used, in accordance with the recordkeeping requirements of § 60–300.80. Again, this will allow for a more effective review by the contractor and OFCCP to ensure the affirmative action obligations of this paragraph are being met.

The proposed regulation adds a new paragraph (k) requiring that the contractor maintain several quantitative measurements and comparisons regarding protected veterans who have been referred by state employment services, have applied for positions with the contractor, and/or have been hired by the contractor. The impetus behind this new section is that, as stated in the discussion of § 60–300.44(a), no structured data regarding the number of protected veterans who are referred for or apply for jobs with Federal contractors is currently maintained. This absence of data makes it nearly impossible for the contractor and OFCCP to perform even rudimentary evaluations of the availability of

protected veterans in the workforce, or to make any quantitative assessments of how effective contractor outreach and recruitment efforts have been in attracting protected veteran candidates. The proposed regulations provide for the collection of referral data (*see* § 60–300.5, paragraph 5 of the EO clause), as well as applicant data (*see* § 60–300.42(a)). Hiring data is already maintained by the contractor in its VETS–100A forms, a requirement which is carried over into this proposal. Accordingly, paragraph (k) requires that the contractor document and update annually the following information: (1) For referral data, the total number of referrals, the number of priority referrals of protected veterans, and the "referral ratio" of referred protected veterans to total referrals; (2) for applicant data, the total number of applicants for employment, the number of applicants who are known protected veterans, and the "applicant ratio" of known protected veteran applicants to total applicants; (3) for hiring data, the total number of job openings, the number of jobs filled, the number of known protected veterans hired, and the "hiring ratio" of known protected veteran hires to total hires; and (4) the total number of job openings, the number of jobs that are filled, and the "job fill ratio" of job openings to job openings filled. The proposed regulation requires that the contractor must document these measurements on an annual basis, and maintain records of them for five (5) years. These basic measurements will provide the contractor and OFCCP with important information that does not currently exist. This will aid the contractor in evaluating and tailoring its recruitment and outreach efforts and in establishing hiring benchmarks as set forth in the discussion of the proposed § 60–300.45, *infra.*

Finally, the proposed regulation replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," with the term "protected veteran" in paragraphs (a), (a)(2), (a)(3), (b), (e), (f), (f)(1), (f)(3), (f)(4), (f)(5), (f)(7), (f)(8), (g), (g)(2)(ii), (g)(2)(vii), and (h)(1)(iv), for the reasons stated in the discussion of § 60–300.2. The proposed regulation also replaces the terms "Vietnam Era Veterans' Readjustment Assistance Act of 1974" or "VEVRAA" with the term "Section 4212" throughout this section, for the reasons stated in the discussion of § 60–300.1.

Section 60–300.45 Contractor-Established Benchmarks for Hiring

The proposed regulation would require for the first time that the contractor establish annual hiring benchmarks, expressed as the percentage of total hires who are protected veterans that the contractor seeks to hire in the following year. As stated in paragraph (a) of the proposed rule and set forth more fully below, these hiring benchmarks would be established by the contractor using existing data on veteran availability, while also allowing the contractor to take into account other factors unique to its establishment that would tend to affect the availability determination.

While the Bureau of Labor Statistics (BLS) and Census Bureau (Census) do not tabulate data pertaining to the specific classifications of protected veterans under part 60–300, there are other existing data sources that are instructive. For instance, BLS tabulates statewide data on the number of veterans in the civilian labor force and the unemployment rate of veterans in the labor force, and national data on the number of veterans with a service-related disability. The Department's Veterans' Employment and Training Service collects statewide data over a rolling, four quarter period of individuals who "participated" in the state employment services. The breakdown of this data includes the number of overall veterans, the number of overall veterans who are identified as being unemployed, and the number of veterans in some, although not all, of the specific categories of veterans protected by part 60–300.

Accordingly, the proposed rule would require that the contractor consult a number of different sources of information, which will be made easily available to the contractor, in establishing hiring benchmarks. As set forth in the proposed paragraph (b), these sources would include: (1) The percentage of veterans in the civilian labor force, tabulated by BLS and which will be published on OFCCP's Web site; (2) the number of veterans who were participants in the state employment service in the State where the contractor's establishment is, which will also be published on OFCCP's Web site; (3) the referral ratio, applicant ratio, and hiring ratios as expressed in the proposed § 60–300.44(k); (4) the contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as expressed in the proposed § 60–300(f)(3); and (5) any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans. The contractor would be required to consider and document each of these factors, *see* proposed paragraph (c) of this section, but would be given discretion to weigh the various factors in a manner that is reasonable in light of the contractor's unique circumstances. We believe that this proposal creates a practical and workable mechanism for establishing benchmarks that will allow the contractor to measure its success in recruiting and employing protected veterans. However, we seek input from stakeholders on this proposal and any additional measures that would make these benchmarks more meaningful, as well as any other measures that would otherwise increase employment opportunities for veterans.

Subpart D—General Enforcement and Complaint Procedures

Section 60–300.60 Compliance Evaluations

This section details the form and scope of the compliance evaluations of the contractor's affirmative action programs conducted by OFCCP. The proposed rule contains several changes to this section.

First, the proposal adds a sentence to paragraph (a)(1)(i) regarding the temporal scope of desk audits performed by OFCCP. This language merely clarifies OFCCP's long-standing policy that, in order to fully investigate and understand the scope of potential violations, OFCCP may need to examine information after the date of the scheduling letter in order to determine, for instance, if violations are continuing or have been remedied. The language does not represent a change in policy or new contractor obligations.

Second, the current paragraph (a)(2) relating to the off-site review of records incorrectly refers to the "requirements of the Executive Order and its regulations;" the proposed rule corrects this to read the "requirements of Section 4212 and its regulations."

Third, the proposed rule contains a change to the nature of document production under paragraph (a)(3). This paragraph, which specifies a "compliance check" as an investigative procedure OFCCP can use to monitor a contractor's recordkeeping, currently states that the contractor may provide relevant documents either on-site or off-site "at the contractor's option." The proposed regulation eliminates this quoted clause and provides that OFCCP may request that the documents to be provided either on-site or off-site.

Fourth, the proposed rule contains a minor change to the scope of "focused reviews" as set forth in paragraph (a)(4). Focused reviews allow OFCCP to target

one or more components of a contractor's organization or employment practices, rather than conducting a more comprehensive compliance review of an entire organization. Currently, the regulations provide that these focused reviews are "on-site," meaning they must take place at the contractor's place of business. The increased use of electronic records that are easily accessible from multiple locations affords compliance officers greater flexibility in conducting focused reviews. Therefore, we propose to delete the word "on-site" from this section, which will allow compliance officers to conduct reviews of relevant materials at any appropriate location.

Fifth, the proposed rule contains a new paragraph (d) which details a new procedure for pre-award compliance evaluation under Section 4212. This proposed rule is based on the pre-award compliance procedure contained in the Executive Order regulations (*see* 41 CFR 60–1.20(d)).

Finally, the proposed regulation replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," with the term "protected veteran" in paragraph (a) for the reasons stated in the discussion of § 60–300.2.

Section 60–300.61 Complaint Procedures

This section outlines the manner in which applicants or employees who are protected veterans may file complaints alleging violations of Section 4212 or its regulations.

The proposed rule replaces the term "Deputy Assistant Secretary" with the term "Director" in paragraphs (e)(1), (e)(2), and (e)(3), for the reasons set forth in the discussion of § 60–300.2. The proposed regulation also replaces the term "state workforce agency" in paragraph (a) with the term "employment service delivery system," for the reasons set forth in the discussion of § 60–300.5. Finally, the proposed regulation replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," with the term "protected veteran" in paragraph (b)(iii), for the reasons stated in the discussion of § 60–300.2.

Section 60–300.64 Show Cause Notice

This section describes the manner in which OFCCP notifies a contractor when it believes the contractor has violated Section 4212 or its regulations. The proposed rule replaces the term "Deputy Assistant Secretary" in this section with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.65 Enforcement Proceedings

This section describes the procedures for formal enforcement proceedings against a contractor in the event OFCCP finds a violation of Section 4212 or its regulations that has not been corrected. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (a)(2) of this section with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.66 Sanctions and Penalties

This section discusses the types of sanctions and penalties that may be assessed against a contractor if it is found to have violated Section 4212 or its regulations. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (a) of this section with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.67 Notification of Agencies

This section provides that agency heads will be notified if any contractors are debarred. The proposed rule replaces the term "Deputy Assistant Secretary" with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.68 Reinstatement of Ineligible Contractors

This section outlines the process by which a contractor that has been debarred may apply for reinstatement. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraphs (a) and (b) of this section with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.69 Intimidation and Interference

This section forbids the contractor from retaliating against individuals who have engaged in or may engage in certain specified protected activities, and describes the contractor's affirmative obligations in preventing retaliation. The proposed rule replaces the term "Deputy Assistant Secretary" in paragraph (b) of this section with the term "Director," for the reasons set forth in the discussion of § 60–300.2. The proposed rule also replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," with the term "protected veteran" in paragraphs (a)(2) and (a)(3) for the reasons stated in the discussion of § 60–300.2.

Subpart E—Ancillary Matters

Section 60–300.80 Recordkeeping

This section describes the recordkeeping requirements that applies to the contractor under Section 4212, and the consequences for the failure to preserve records in accordance with these requirements. The proposed regulation adds a sentence at the end of paragraph (a) of this section clarifying that the newly proposed recordkeeping requirements set forth in §§ 300.44(f)(4) (linkage agreements and other outreach and recruiting efforts), 300.44(k) (collection of referral, applicant and hire data), 300.45(c) (criteria and conclusions regarding contractor established hiring benchmarks), and Paragraph 5 of the equal opportunity clause in § 60–300.5(a) (referral data) must be maintained for five (5) years, for the reasons set forth in the discussion of those sections, *supra.*

Section 60–300.81 Access to Records

This section describes a contractor's obligations to permit access to OFCCP when conducting compliance evaluations and complaint investigations. The proposed rule adds some language clarifying the contractor's obligations, particularly in light of the increased use of electronically stored records. First, the proposed rule adds a sentence requiring the contractor to provide off-site access to materials if requested by OFCCP investigators or officials as part of an evaluation or investigation. This change reflects the increased use of electronic records from multiple locations, and accordingly gives OFCCP greater flexibility in conducting its evaluations and investigations. Second, the proposed rule requires that the contractor specify to OFCCP all formats (including specific electronic formats) in which its records are available, and produce records to OFCCP in the format selected by OFCCP. This change is proposed in light of numerous instances in which OFCCP has conducted extensive review and analysis of a contractor's records only to find subsequently that the records were available in more readily accessible formats. Specifying the variety of available formats upon request, and providing records to OFCCP in the format it selects, will facilitate a more efficient investigation process.

Section 60–300.83 Rulings and Interpretations

This section establishes that rulings and interpretations of Section 4212 will be made by the Director of OFCCP. The proposed revisions make minor changes, replacing the term "Deputy Assistant Secretary" with the term "Director," for the reasons set forth in the discussion of § 60–300.2.

Section 60–300.84 Responsibilities of Appropriate Employment Service Delivery Systems

This section outlines the responsibilities of employment service delivery systems, including the obligation to give priority referral to protected veterans for jobs listed by a Federal contractor. The proposed rule replaces the phrase "disabled veteran(s), recently separated veteran(s), other protected veteran(s), or Armed Forces service medal veteran(s)," with the term "protected veteran" for the reasons stated in the discussion of § 60–300.2.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty to Provide Reasonable Accommodation

The proposed rule includes four changes to Appendix A which would mandate activities that previously were only suggested. These changes primarily reflect proposed revisions to §§ 60–300.2 and 60–300.42(d), *supra,* that would alter the contractor's responsibilities.

First, in the third sentence of paragraph 2, we propose changing the language to reflect the change to § 60–300.42(d) requiring a contractor to seek the advice of disabled veterans in providing reasonable accommodation. Second, in the last sentence of Paragraph 4, the proposed rule is changed to require that disabled veterans, in the event an accommodation would constitute an undue hardship for the contractor, be given the option of providing the accommodation or paying the portion of the cost that constitutes the undue hardship for the contractor. Third, in the fourth sentence of paragraph 5, we propose changing the language to require a contractor to seek the advice of disabled veterans in providing reasonable accommodation. Finally, in the last sentence of paragraph 9, the proposed rule is changed to require that a contractor must consider the totality of the circumstances when determining what constitutes a "reasonable amount of time" in the context of available vacant positions.

Additionally, the proposed rule changes the reference to "§ 60–300.2(o)" in paragraph 1 of Appendix A to "§ 60–300.2(t)," and changes the references to "§ 60–300.2(t)" in paragraphs 5 and 8 of Appendix A to "§ 60–300.2(u)." This is to reflect the revised alphabetical structure of the definitions section in the proposed rule, as discussed in § 60–300.2, above. The proposed regulation also replaces the term "VEVRAA" with "Section 4212" for the reasons set forth in the discussion of § 60–300.1.

Appendix B to Part 60–300—Sample Invitation to Self-Identify

The proposed rule amends Appendix B consistent with the proposed changes to the self-identification regulation found at § 60–300.42. The first paragraph is amended simply to include detailed definitions of the four types of classifications of protected veterans. These definitions are to be included in a contractor's invitation to self-identify either at the pre-offer (proposed § 60–300.42(a)) or post-offer (proposed § 60–300.42(b)). We propose this change to clarify for the contractor and for applicants exactly which categories of veterans are protected by part 60–300.

The second paragraph of the Appendix contains the suggested model language for the self-identification of protected veterans. The current language has models to be used if they are being distributed to non-disabled protected veterans exclusively, disabled veterans exclusively, or to all protected veterans. In keeping with the proposed changes in § 60–300.42, we propose amending the second paragraph to include two models: One that will be given to all applicants at the pre-offer stage, and one that will be given at the post-offer stage to all individuals who have been offered employment by the contractor. For the pre-offer stage, the invitation refers to the definitions for each of the classifications of protected veterans and invites applicants to identify if they belong to any one (or more) of them generally. It does not provide for individuals to self-identify as a particular type of protected veteran (*e.g.,* a qualified disabled veteran). For the post-offer stage, the invitation again refers to the definitions for each of the classifications of protected veteran and then invites applicants to indicate to which specific classifications of protected veteran they belong.

For both the pre-offer and post-offer invitations, we have proposed new language explaining to applicants that the information is being requested in order to measure the contractor's outreach and recruitment efforts required under part 60–300. This replaces the current language which only inquires whether individuals would like to be included under the contractor's affirmative action program. The post-offer invitation in Paragraph 2 also incorporates the language in the current paragraph 7 of the Appendix, which requests that disabled veterans describe possible workplace accommodations, with the exception of replacing "elimination of certain duties relating to the job" with "changes in the way the job is customarily performed." We propose this change merely to clarify the nature of the interactive process, and to eliminate any confusion that might exist regarding the existing language that "elimination of certain duties" could be read to include eliminating essential functions of the job. It is a change in verbiage only, and does not alter the substantive obligations of the contractor or applicant in the interactive process.

Finally, the proposed regulation also replaces the term "VEVRAA" with "Section 4212" for the reasons set forth in the discussion of § 60–300.1.

Appendix C to Part 60–300—Review of Personnel Processes

The proposed rule deletes Appendix C and moves the its content, with some edits, to § 60–300.44(b). *See* the Section-by-Section Analysis of § 60–300.44, *supra,* for further discussion.

Regulatory Procedures

Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Need for the Regulation

The guiding principle and overall benefit of this proposed regulation is plain: To facilitate the process of connecting veteran job-seekers with contractor employers who are seeking to hire protected veterans and helping these veterans succeed once they are

employed. As we have stated previously in this NPRM, the framework articulating a contractor's responsibilities with respect to affirmative action, recruitment, and placement have remained largely unchanged since the Section 4212 implementing rules were first published in 1976. Meanwhile, increasing numbers of veterans are returning from tours of duty in Iraq, Afghanistan, and other places around the world. These veterans possess valuable skills that are highly sought after in the job market. However, veterans face substantial obstacles in finding employment upon leaving the service and returning home. Addressing the barriers our veterans face upon returning to civilian life, particularly with regard to employment, is a high priority of the current Administration and, as discussed in the background section, has been the focus of a number of Federal efforts.

To ascertain how OFCCP could assist veterans in their search for employment, and facilitate the contractor's satisfaction of affirmative action obligations designed to employ more veterans, OFCCP conducted multiple town hall meetings, webinars, and listening sessions with the public to determine how we could increase the employment opportunities for qualified protected veterans with Federal contractors. Based upon the information OFCCP received, we identified specific changes that could be made to the implementing regulations of Section 4212 that would help increase employment opportunities for veterans.

The changes set forth in this proposal create four broad categories of benefits. First and foremost, the proposed changes will connect job-seeking veterans with contractors looking to hire. Currently, there is much confusion regarding exactly how and with whom the contractor must list its jobs. Therefore, as an initial matter, the proposal clarifies the mandatory job listing requirements and requires the contractor to provide additional, regularly updated information to employment service delivery systems to ensure its job openings are listed accurately. This will help to ensure that veterans can easily learn about all available jobs with Federal contractors in their state. The proposal also helps to ensure that the contractor can find veterans, by requiring the contractor to engage in recruitment efforts and enter into linkage agreements with several veterans' employment sources (many of which are specifically listed by OFCCP in the proposed rule), while allowing the contractor the flexibility to determine the sources that work best.

Second, many of the proposed changes ensure that the contractor understands and effectively communicates its affirmative action obligations to its workforce and the other entities with which it does business. While bringing job-seeking veterans and employers together is an important first step, it is equally important that the contractor, its employees, and veteran applicants understand the protections and benefits of Section 4212. Accordingly, the proposed rule seeks to promote this clear communication in several ways, including:

- Holding annual meetings (whether in-person, or via webinar or videoconferencing) with all employees to discuss the AAP, contractor/individual responsibilities, and individual employee opportunities for advancement;
- Holding meetings with executive, management, and supervisory personnel to explain the intent of the AAP and responsibilities in implementing it; and discussing the policy at employee orientation and training programs.

These steps will facilitate a greater understanding of the purpose of the affirmative action policies among the contractor's employees, and will enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. The proposed rule will also promote clearer communication of Section 4212 obligations by:

- Providing notices of rights under Section 4212 in accessible formats for those working offsite (*i.e.,* electronically-accessible postings) as well as those with visual impairments, so that all parties understand their respective rights and obligations under the law;
- Requiring the contractor to review its personnel processes on an annual basis, and to document personnel actions taken with regard to protected veterans to provide greater transparency between the contractor, its applicants/employees, and OFCCP as to the reasons for the contractor's personnel actions; and
- Requiring the contractor to meet with and/or otherwise send notification of its AAP obligations to third parties with which it does business, such as union officials and subcontractors.

Third, the proposed rule provides increased mechanisms by which the contractor can assess its affirmative action efforts. Until now, the contractor had few objective measures by which it could measure the extent to which the resources spent on AAP were effective or could be used most effectively. To that end, the proposed rule requires the contractor to collect data—and OFCCP to provide some additional data—by which the contractor may more accurately assess its efforts. This includes collecting data on referrals and applicants so the contractor knows how many protected veterans it is reaching. The contractor will be able to use this information, as well as other veteran employment data provided by OFCCP, to set benchmarks by which the contractor can objectively measure its recruitment efforts and determine which ones are most fruitful in attracting qualified protected veteran candidates.

Finally, the proposed rule's changes to the manner in which OFCCP conducts its compliance reviews will benefit both protected veterans and the contractor. These changes include a greater emphasis on identifying electronic data that OFCCP can review, greater flexibility in where reviews take place, and a new procedure for a pre-award compliance review. The emphasis on using electronic data and flexibility will allow OFCCP to complete reviews far more efficiently.

Discussion of Impacts

OFCCP has separately determined the costs of compliance with those requirements of Section 4212 falling under the scope of the Paperwork Reduction Act. *See* Analysis of Paperwork Reduction Act burden, *infra.* Additional costs outside the scope of the PRA, which are new obligations in the proposed rule, are as follows:

60–250.44(f)(3)/60–300.44(f)(3): As discussed in the Section-by-Section Analysis of this paragraph, the proposed rule would require the contractor to review the effectiveness of its outreach and recruitment efforts on an annual basis. The general purpose of this self-assessment is to ensure that the contractor think critically about its recruitment and outreach efforts, and requiring it will allow the contractor to look at its measurable accomplishments, maintain methods that are successful in recruiting protected veterans, and reconsider unproductive methods. OFCCP estimates that this annual review will take approximately 20 minutes. OFCCP further estimates that 1% of the 108,288 Federal contractor establishments are first-time contractors during an abbreviated AAP year, and therefore would be unable to complete an annual outreach and recruitment effort.

60–250.44(g)/60–300.44(g): As discussed in the Section-by-Section Analysis of this paragraph, the proposed rule would require holding annual meetings (either in person, or in

technology-adapted formats such as webinars or videoconferencing) with all employees to discuss the AAP, contractor/individual responsibilities, and individual employee opportunities for advancement; meetings with executive, management, and supervisory personnel; and discussing the policy at employee orientation and training programs. Frequent establishment-wide training on affirmative action issues is a benefit to both the contractor and protected veterans, as it will enhance the visibility and facilitate a greater understanding of the importance of affirmative action to the recruitment, hiring, and advancement of protected veterans, creating a culture of compliance. It will also help to ensure that protected veterans themselves are aware of, and better able to avail themselves of, their rights. To decrease contractor burden, OFCCP will provide a sample training module. OFCCP estimates that 90% of contractors, or 97,459, will use this sample training, and that 10% of contractors, or 10,829, will create their own training. OFCCP further estimates that downloading the sample training will take 15 minutes and that creating training will take 10 hours. The average burden per contractor establishment would be the following: 97,459 × 15/60/108,288 = .2 hours; 10,829 × 10/108,288 = 1 hour. OFCCP estimates an average of 1.2 hours per contractor establishment for compliance with this requirement.

60–250.44(j)/60–300.44(j): As discussed in the Section-by-Section Analysis of this paragraph, the proposed rule would also require specific training for those involved in personnel decisions to ensure that they are making such decisions in compliance with Section 4212, detailing specific topics that must be addressed. Once again, training on these issues will benefit the contractor and veterans by facilitating a greater understanding of the purpose of the affirmative action plan among decision makers for the contractor, and will enhance the visibility and importance of affirmative action to the recruitment, hiring, and advancement of protected veterans. Furthermore, proactive training on these issues holds the real promise of reducing the number of Section 4212 violations. OFCCP estimates a total of 2 hours per contractor establishment for compliance with this requirement.

60–250.45/60–300.45: As discussed in the Section-by-Section Analysis of this paragraph, the proposed rule would require the contractor to establish benchmarks, based on a mix of data collected by the contractor and the Department, as well as a subjective component to allow the contractor to take into account any unique aspects of the nature of the contractor's job openings and/or its location. This requirement benefits the contractor by providing a marker by which they can quantitatively measure the success of their outreach and recruitment efforts. OFCCP estimates (for the portion of this requirement not covered by the PRA analysis, *infra*) a total of 1 hour per contractor establishment for compliance with this requirement.

The estimated annualized cost to respondent contractors is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (June 2010), which lists total compensation for management, professional, and related occupations as $48.74 per hour and administrative support as $23.25 per hour. OFCCP estimates that 52% percent of the burden hours will be management, professional, and related occupations and 48% percent will be administrative support. We have calculated the total estimated annualized cost for the obligations described above (*i.e.,* those that do not fall under the scope of the Paperwork Reduction Act) as follows:

Mgmt. Prof.: 108,288 contractors × 4.5 hours × .52 × $48.74/hr = $12,350,420

Adm. Supp.: 108,288 contractors × 4.5 hours × .48 × $23.25/hr = $ 5,438,223

Total annualized cost estimate = $17,788,643

Estimated annual average cost per establishment is: $17,788,643/108,288 = $164

OFCCP has calculated the annual average cost per establishment for complying with those provisions that fall under the Paperwork Reduction Act as $396 per contractor establishment. *See* Paperwork Reduction Act discussion, *infra.* This means the total estimated annual cost per establishment of the proposed rule is approximately $560. However, additional elements of the proposed rule should reduce the cost of compliance for the contractor. For instance, OFCCP estimates that proposed provisions allowing for electronic posting of employee rights under Section 4212 could save the contractor 10 minutes of administrative compliance time per year (0.17 hours × $23.25/hr = $4 annual savings per year). Proposals for streamlined compliance review mechanisms and greater focus on reviewing electronic records, rather than paper (*see* Section-by-Section Analysis of 60–250.60/300.60, 60–250.81/300.81), are also designed to reduce the time the contractor and OFCCP spend on compliance and enforcement.

In short, OFCCP believes that the myriad benefits discussed in the Section-by-Section analysis and in this section—bringing veterans and contractors together, ensuring that those in the workplace understand the respective obligations under Section 4212, providing the contractor a tool to measure its affirmative action efforts through increased data collection, and more efficient compliance reviews—more than makes up for the cost we have calculated. OFCCP invites comments from stakeholders on the cost/benefit analysis included in this section.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* (RFA) requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis and to develop alternatives wherever possible when drafting regulations that will have a significant impact on a substantial number of small entities. The focus of the RFA is to ensure that agencies "review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA]."

Based on the analysis below, in which OFCCP has estimated the burdens to covered small contractors and subcontractors in complying with the requirements contained in this proposed rule, OFCCP believes that this rule will not have a significant economic impact on a substantial number of small Federal contractors and subcontractors but invites comments on its analysis, and requests that commenters provide any additional data they may have on costs and benefits.

The FY 2009 Equal Employment Data System Report (EEDS), which compiles information on Federal contractors for OFCCP, showed that there were 108,031 Federal contractor and subcontractor establishments under OFCCP jurisdiction. EEDS information concerning the number of contractor establishments is derived from the EEO–1 Report, which the Equal Employment Opportunity Commission submits to OFCCP annually. OFCCP also includes 257 post-secondary institutions under its jurisdiction, for a total of 108,288 contractor establishments. Based on data analyzed in the Federal Procurement Data System (fpds.gov), which compiles data about types of

contractors, of these 108,288 contractor establishments, approximately 35% would be "small entities" as defined by the Small Business Administration (SBA) size standards.[2] It should be noted that this number of "establishments" would likely be much larger than the number of "entities" or "contractors." Entities generally equate to businesses, many of which may in fact have multiple establishments. However, given lack of any other data on the number of small Federal contractors, for the purposes of the RFA analysis OFCCP estimates that this rule will affect 37,901 small Federal contractors.

The primary goal of this NPRM is increased affirmative action to employ and advance in employment protected veterans, including proactive recruitment of protected veterans for jobs with Federal contractors and increased awareness by Federal contractors' employees (including veterans) and managers of the non-discrimination and affirmative action protections afforded protected veterans. The benefits from this proposal (discussed in more detail throughout the Section-by-Section Analysis and in the discussion of Executive Order 12866, *supra*), particularly would accrue to veterans who might not have known about job openings or might not have been hired or promoted. As there were almost a million veterans unemployed in 2009 and many others not in the labor force who would likely want to be employed, increased efforts to employ veterans could help a significant number of veterans. The contractor also will benefit from access to a well-trained, job-ready employment pool.

This goal of increased employment of protected veterans is achieved through the changes to Part 60–300 outlined below. Conforming changes are also proposed to 41 Part 60–250 in the event that OFCCP learns of Federal contracts that are currently in effect that were entered into before December 1, 2003 and not modified since. For purposes of this analysis, even if there are a few such contracts still in effect, the number of contractors affected would be so small that any costs and benefits resulting from changes to Part 60–250 would be *de minimis.*

The significant benefits to protected veterans, as well as the contractor, have been discussed extensively in the Section-by-Section Analysis section of this NPRM and in the discussion of this proposal's conformity with Executive Order 12866. Generally, the proposed rule will benefit veterans and the contractor by: Providing effective mechanisms, such as refined mandatory job listing requirements and linkage agreements with veteran-related organizations, so that qualified veterans and contractors find each other to their mutual benefit; ensuring that those in the workplace understand the respective obligations under Section 4212; providing the contractor with tools, through increased data collection, to quantifiably measure their affirmative action efforts and adjust them for maximum effect; and more efficient compliance reviews. The estimated costs associated with this proposal have been detailed in the sections discussing Executive Order 12866 and the Paperwork Reduction Act, herein. Below is a summary of those costs that will affect small Federal contractors, as defined in this section.

PRA Costs

Mgmt. Prof. 406,788 hours[3] × .52 × $48.74 = $10,309,961

Adm. Supp. 406,788 hours × .48 × $23.25 = $4,539,754

Operations & Maintenance Cost (for 35% of contractors) $146,345

Total annualized cost estimate = $14,996,060

Estimated average cost per establishment is: $14,996,060/37,901 = $396

Non-PRA Costs

Mgmt. Prof.: 170,554 hours[4] × .52 × $48.74/hr = $4,322,657

Adm. Supp.: 170,554 hours × .48 × $23.25/hr = $1,903,383

Total annualized cost estimate = $6,226,040

Estimated annual average cost per establishment is: $6,226,040/37,901 = $164

Therefore, the total estimated annual cost to small contractors nationwide is $21,222,100, or approximately $560 per small contractor.

The same obligations bind prime contractors and subcontractors under OFCCP jurisdiction. Therefore, for the purpose of determining time spent on compliance, OFCCP will not differentiate between the obligations of prime contractors and subsequent tiers of subcontractors; OFCCP assumes that all contractors, whether prime contractor or subcontractor, will spend equivalent amounts of time engaging in this compliance activity.

When considering the potential economic impact of a proposed regulation, one important indicator is the cost of compliance in relation to revenue of the entity or the percentage of profits affected. *Id.* The universe of affected entities is all Federal contractors and the universe of affected small entities is all small entity contractors with 50 or more employees (37,901). The cost of this rule per entity ($560) is not likely to have a significant economic impact for any (or a substantial number) of these small contractors. Although the number of small Federal contractors, at 37,901, may represent a substantial number of Federal contractors and subcontractors, OFCCP concludes that this economic impact on individual contractors is not significant. Further, the 2004 U.S. Census Bureau Statistics about Business Size (including Small Business), Employment Size of Firms, Table

[2] The Federal Procurement Data System compiles data regarding small business "actions" and small business "dollars" using the criteria employed by SBA to define "small entities." In FY 2008, small business actions accounted for 50% of all Federal procurement action. However, deriving a percentage of contractors that are small using the "action" data would overstate the number of small contactors because contract actions reflect more than just contracts; they include modifications, blanket purchase agreement calls, task orders, and Federal supply schedule orders. As a result, there are many more contract actions than there are contracts or contractors. Accordingly, a single small contractor might have hundreds of actions, e.g., delivery or task orders, placed against its contract. These contract actions would be counted individually in the FPDS, but represent only one small business.

Also reflected in FPDS, in FY 2008, small business "dollars" accounted for 19% of all Federal dollars spent. However, deriving a percentage of contractors that are small using the "dollars" data would understate the number of small contractors. Major acquisitions account for a disproportionate share of the dollar amounts and are almost exclusively awarded to large businesses. The top five Federal contractors, all large businesses, accounted for over 20% of contract dollars in FY 2008. As a result, because the largest Federal contractors disproportionately represent "dollars" spent by the Federal government, the FPDB's data on small "dollars" spent understates the number of small entities with which the Federal government does business.

The Department concludes that the percentage of all Federal contractors that are "small" is likely between 19% and 50%. The upper and lower bounds are derived from the FPDS figures on small "actions" and small "dollars." The mean of these two percentages is 35%, and the Department has used this figure to estimate how many of all Federal contractors are "small entities" in SBA's terms.

[3] This figure comes from taking the total burden for all contractors in the PRA section (1,162,251 hours) and multiplying it by 35%, which is our calculation of the number of contractors which can be classified as "small Federal contractors" as detailed in this section.

[4] This figure comes from taking the total burden for all contractors in the EO 12866 section (4.5 annual hours per contractor establishment, multiplied by 108,288 total Federal contractor establishments, for a total burden for all contractors nationwide of 487,296 hours), and multiplying it by 35%, which is our calculation of the number of contractors which can be classified as "small Federal contractors" as detailed in this section.

2a,[5] indicate there are 526,355 Employer Firms with 20–99 employees compared to 5,255,844 firms with 0 to 19 employees. Employer firms with 20 to 500 or more employees equal 629,940 employers firms. Therefore, U.S. employer firms with 20 to 500 employees represents 11.9% of the total employer firms. As stated earlier, the threshold for the affirmative action provisions of this NPRM is 50 or more employees, which will affect approximately 11.9% of the employer firms.

Therefore, under 5 U.S.C. 605, OFCCP believes that the proposed rule will not have a significant economic impact on a substantial number of small entity contractors but invites comments on its analysis.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. Until any final regulations become effective and OFCCP publishes a notice announcing OMB's approval of these proposed information collections, they will not take effect.

The information collection requirements contained in the existing Section 4212 regulations, with the exception of those related to complaint procedures, are currently approved under OMB Control No. 1250–0003 (Recordkeeping and Reporting Requirements-Supply and Service) and OMB Control No. 1250–0001 (Construction Recordkeeping and Reporting). The information collection requirements contained in the existing complaint procedures regulation are currently approved under OMB Control No. 1250–0002.

The proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This proposal includes several new requirements shown below with their respective burden estimates.

The information collections discussed below relate to Federal contractor and subcontractor responsibilities under 38 U.S.C. 4212 as amended and its implementing regulations at 41 CFR 60–250 and 41 CFR 60–300. OFCCP invites the public to comment on whether the proposed collections of information:

(1) Is necessary to the proper performance of the agency, including whether the information will have practical utility;

(2) Estimates the projected burden, including the methodology and assumptions used, accurately; and

(3) Is structured to minimize the burden of the collection of information on those who are to respond, including through the use or appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.* permitting electronic submission of responses.)

Where estimates are provided or assumptions are described, contractors and other members of the public are encouraged to provide data they have that could help OFCCP refine the estimates of amount of time needed to fulfill specific requirements.

- *60–250.5/300.5*

○ Contractor must provide job vacancy information to appropriate employment service delivery system (ESDS) in usable format (¶ 2 of EO Clause).

- The contractor's mandatory job listing obligations, which is required by 38 U.S.C. 4212(a)(2)(A) and promulgated in OFCCP's regulations at FR, Vol. 43, No. 204—Friday, October 20, 1978, requires federal contractors and subcontractors to list their job opening with the state or local employment service delivery system. To reduce the burden on the contractor, it has the flexibility to list its job openings at the state or local employment service delivery system concurrently with the contractor's use of any other recruitment source or effort. Further, to reduce the burden, the mandatory job listing requirement need not include .(1) executive and top management positions, (2) positions that will be filled from within the contractor's organization, and (3) positions lasting three days or less.

- The contractor must provide state or local employment service delivery system information that is sufficient to carry out its responsibilities under VEVRAA to give protected veterans priority referrals to federal contractor employment openings. This has always been a requirement under Section 4212 and its regulations. OFCCP estimates that the required gathering of records, reporting the job listing, and recordkeeping would take 15 minutes per job listing. The FY 2009 Equal Employment Data System Report (EEDS), which compiles information on Federal contractors for OFCCP, showed that there were 108,031 Federal contractor and subcontractor establishments under OFCCP jurisdiction. EEDS information concerning the number of contractor establishments is derived from the EEO–1 Report, which the Equal Employment Opportunity Commission submits to OFCCP annually. OFCCP also includes 257 post-secondary institutions under its jurisdiction, for a total of 108,288 contractor establishments. The number of listings provided by contractors may vary from year to year, from a low of zero to a high of one per month. OFCCP estimates that on average a contractor will provide 2 listings annually, or 30 minutes. Therefore, OFCCP estimates $108{,}288 \times 30/60 = 54{,}144$ total Federal contractor hours for gathering of records, reporting the job listing, and recordkeeping.

○ Contractor must provide ESDS additional information, updated on an annual basis (¶4 of EO Clause) The current regulations require that the contractor provide the appropriate state employment service with the name and location of each of the contractor's hiring locations. The proposed regulations require that the contractor provide the state employment service with the following additional information: (1) Its status as a Federal contractor; (2) contact information for the contractor hiring official at each location in the state; and (3) its request for priority referrals by the state of protected veterans for job openings at all locations within the state. This information shall be updated on an annual basis. These three additional items are proposed in light of feedback received from state employment services and congressional testimony citing concerns about appropriate interface between federal contractors and state and local employment service delivery system staff. Using some form of electronic means (email, fax, etc), OFCCP estimates a total of 15 minutes to give the ESDS the information newly required by this regulation (status as a federal contractor, contact information for the contractor hiring official, and the request for priority referrals). The proposed regulation also adds a sentence clarifying that, if the contractor uses any outside job search organizations (such as a temporary employment agency) to assist in its hiring, the contractor must provide the state employment service with the contact information for these outside job search organizations. OFCCP further estimates 25% of contractors, or 27,072, will use outside job search organizations, and 5 additional

[5] *See http://www.census.gov/epcd/www/smallbus.html.*

minutes for the contractor to notify state employment agencies concerning its outside job search organizations. The burden to give ESDS additional information is 108,288 × 15/60 = 27,072 hours. The burden to notify the state employment service about outside job search organizations is 27,072 × 5/60 = 2,256 hours. The sum of 27,072 + 2,256 = 29,328 total Federal contractor hours.

○ Contractor must maintain records, for five years, of the total number of priority referral of veterans, and ratio of veteran referrals to total referrals (¶ 5 of EO Clause). The contractors is already required to keep applicant data for either one or two years, depending on their size, *see* 41 CFR 60–300.80, thus the only changes proposed are that the contractor calculate the ratio of preferred veteran referrals and to maintain these records for an additional period of time. According to the ETA 9002 B Quarterly Report from July 1, 2008 to June 30, 2009, State employment office staff referred 75,657 protected veterans (campaign, special disabled, and recently separated veterans) to Federal contractor job vacancies. However, some contractors may receive no referrals (and have few or no job postings) while others will receive multiple referrals. It is expected that computing the ratio for multiple referrals is not significantly more time consuming than doing a ratio for a small number of referrals. OFCCP estimates that the contractor will take 30 minutes to analyze the ratio of veteran referrals. Therefore, the estimated maximum burden hours associated with calculating the ratio of veteran referrals would be 30 × 75,657/60 = 37,829 total Federal contractor hours.

Contractor must include the entire clause verbatim in Federal contracts (.5(d), .5(e)) (This is a third party disclosure burden.) A contractor may copy/paste the EO Clause from the OFCCP regulations into its contracts. Assuming each of the federal contractor establishments has a single contract would equal 108,288 times 1 minute of copy/paste time would equal 108,288 minutes divided by 60 minutes equals 1,805 total Federal contractor hours.

○ Contractor must provide Braille, large print, or other versions of notice so that visually impaired may read the notice themselves (¶ 10 of EO Clause).

• The FY 2008 VETS–100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation, therefore the estimate is 10% of the SDVs may request an accommodation due to visual impairment. OFCCP estimates that it takes 5 minutes for the contractor to receive the accommodation request and 5 minutes for recordkeeping and providing the notice in an alternative format, for a total of 10 minutes per request. Therefore, 10 minutes times 6,200 SDVs equals 62,000 minutes divided by 60 minutes equals 1,033 total Federal contractor hours.

○ Posting of notice for employees working at a site other than the contractor's physical location. (¶ 10 of EO Clause). OFCCP estimates one or more offsite locations at 10% of contractors, or 10,829, and posting a notice on the company's Web site so that offsite employees can access the notice. No additional hours for creation of the notice since the notice is already required. OFCCP estimates 5 minutes for each contractor to post the notice on its Web site. Therefore, 10,829 × 5 minutes/60 = 902 total Federal contractor hours.

○ Contractor must state in all solicitations and advertisements that it is an EEO employer of veterans (¶13 of EO Clause). (This is a third party disclosure burden.) The contractor already must state that it is an EEO employer due to many state and federal requirements, including the Executive Order EEO requirements. This revision would simply require the contractor to add protected veterans to the list of categories of protected EEO groups. OFCCP estimates 1 minute additional burden per contractor, or 108,288 × 1 minute/60 = 1,805 total Federal contractor hours.

• *60–250.41/300.41*

□ Contractor must inform employees who do not work at contractor's physical establishment regarding the availability of AAP for review. OFCCP estimates one or more offsite location at 10% of contractors, or 10,829, and posting a notice on the company's Web site so that offsite employees can access the notice to find out about the availably of the AAP to review. OFCCP estimates 5 minutes to create this notice. (Posting time is accounted for in above ¶10 of EO Clause, "Posting of notice for employees working at a site other than the contractor's physical location"). Therefore, 10,829 × 5 minutes/60 = 902 total Federal contractor hours.

• *60–250.42/300.42*

□ The proposed regulation would require that the contractor invite all applicants to self-identify as a protected veteran generally prior to the offer of employment, and invite individuals who receive job offers to indicate the particular category or categories of protected veteran to which they belong (.42(a)). In Appendix B of the proposed regulation, OFCCP provides sample invitations to self-identify so that the contractor will not have the burden of creating these invitations. We estimate it will take 1 minute for the contractor to copy and paste the sample invitations to self-identify from the regulations into a separate document that it can store electronically and include in electronic applications or print out in paper applications as needed. Multiplying 1 minute by the 108,288 establishments equals 108,288 minutes/60 = 1,805 total Federal contractor hours adapting the self-identification forms in Appendix B for contractor use.

OFCCP estimates that protected veteran applicants will have a minimal burden complying with this proposal in the course of completing their application for employment with a contractor—specifically, providing their separation form, the DD–214, and checking the appropriate boxes in the self-identification forms. To calculate the total number of protected veteran applicants, OFCCP reviewed DOL/ETA's 9002 B Quarterly Reports for the period July 1, 2008 to June 30, 2009, which shows 75,657 total priority referrals to federal contractors nationwide. We therefore estimate 75,657 applicants. At 1 minute per applicant, the total applicant burden would be 75,657 × 1/60 = 1261 total hours for documenting status as a protected veteran. Of course, veterans stand to benefit from this minimal time spent, as it will notify contractors of their status and the possibility that that may benefit from the protections of Section 4212. Further, the self-identification process is entirely voluntary, and veteran applicants may opt not to participate, and thus take on zero burden.

□ Contractor is required to seek advice of applicants regarding reasonable accommodations, when applicable (.42(d)). We estimate 1 minute for the contractor to note those applicants that have identified as a disabled veteran and to make the initial inquiry with the applicant about proper placement and reasonable accommodation. The FY 2008 VETS–100 report identified 62,000 Special Disabled Veterans (SDVs). Thus, there will be a total of 62,000 minutes, or 1,033 total Federal contractor hours making this initial inquiry. OFCCP is aware that the contractor will undertake time to process these requests and keep records of these requests. However, processing these requests is covered by the ADA and recordkeeping is covered by Section 503 regulations, at 41 CFR 60–741.69.

OFCCP estimates that disabled veteran applicants will have a small amount of burden providing documentation concerning reasonable accommodation. The FY 2008 VETS–100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation. OFCCP estimates 10% of referrals will be associated with an accommodation request and that the affected disabled veterans will have on hand the needed documentation. Thus the only burden will be in providing the documentation to the contractor which is estimated to take 1 minute. We therefore estimate 62,000 × 10% = 6,200 × 1 minute/60 = 103 total hours of burden on certain applicants for providing documentation of reasonable accommodation. Again, however, disabled veterans stand to benefit from this disclosure requirement if they choose to participate, as it is intended to help the veteran secure an accommodation that will allow him or her to perform the job.

□ Contractor must maintain self-identification data (.42(e)). The contractor was required to maintain self-identification data prior to this proposed regulation. Reviewing the entire data collection process outlined in the first paragraph of this section, we estimate that simply maintaining the completed self-identification forms will take 1 minute per contractor, or 108,288 minutes/60 = 1,805 total Federal contractor hours.

• *60–250.44/300.44*

□ Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)). The FY 2008 VETS–100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation, therefore the estimate is 10% of the SDVs may request an accommodation due to visual impairment. OFCCP estimates that it takes 5

minutes for the contractor to receive the accommodation request and 5 minutes for recordkeeping and providing this document in an alternative format, for a total of 10 minutes. Therefore, 10 minutes times 6,200 SDVs equals 62,000 minutes divided by 60 minutes equals 1,033 total Federal contractor hours complying with this paragraph.

□ Contractor must review personnel processes annually, and is required to go through a specific analysis for doing so which would include: (1) Identifying the vacancies and training programs for which protected veteran applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for special disabled veterans who were selected for hire, promotion, or training programs (.44(b)).

• The contractors needs to identify vacancies as part of the review. According to the ETA 9002 B Quarterly Report from July 1, 2008 to June 30, 2009, State employment office staff referred 75,657 protected veterans (campaign, special disabled and recently separated veterans) to Federal contractor job vacancies. Therefore, OFCCP estimates Federal contractors and subcontractors will need to identify approximately 75,657 job vacancy listings during the above time period times 15 minutes per listing equals 75,657 × 15 minutes = 1,134,855 minutes/60 minutes = 18,914 total Federal contractor hours for gathering of records and recordkeeping.

• OFCCP estimates 15 minutes per contractor per year to identify training programs for veteran applicants and employees, which means 15 × 108,288/60 = 27,072 total Federal contractor hours.

• For providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations, OFCCP estimates 30 minutes per contractor per year, or 30 × 108,288/60 = 54,144 total Federal contractor hours.

• For describing the nature and type of accommodations for disabled veterans who were selected for hire, promotion, or training programs. The FY 2008 VETS–100 report identified 62,000 Special Disabled Veterans (SDVs). Thus, there will be a total of 62,000 inquiries. OFCCP estimates 10% of referrals leading to an accommodation request, and 30 minutes per accommodation request. Therefore, the hours would be 30 × 62,000 × 10%/60 = 3,100 total Federal contractor hours.

□ Contractor must review physical and mental job qualifications annually to ensure that they are job-related and consistent with business necessity (.44(c)(1)). This provision exists in the current VEVRAA regulations (as well as the Section 503 regulations); the only difference is that the proposed regulations call for the review to occur "annually," rather than "periodically." Therefore, all existing or previous contractors should have experience in performing the required review.

For those contractors who have not previously performed the required review, OFCCP estimates that 1% of federal contractors are first-time contractors required to develop initial standards for the employee workforce. Therefore, 108,288 total federal contractors times 1% equals 1,083 contractors. According to the Bureau of Labor Statistics (BLS), the 2010 Standard Occupational Classification (SOC) system is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. All workers are classified into one of 840 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 461 broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together. OFCCP estimates that the average federal contractor will only have 20% of the 461 broad occupations in their workforce, therefore, on average, the contractor will have 92 occupations for which to conduct an annual review. OFCCP estimates that the contractor will take 10 minutes to review mental and physical job qualifications for each of the average 92 occupations. Therefore, 92 occupations times 10 minutes equals 920 minutes, multiplied by the estimated 1,083 first time contractors/60 minutes per hour equals a total of 16,606 Federal contractor hours for first-time contractors spent complying with this paragraph.

OFCCP estimates that 90% of contractors, or 97,459, will have no changes to their job descriptions in a given year. Therefore, for contractors that have already performed the required review as set forth in the current regulations, and have not changed the job descriptions or physical/mental job qualifications, OFCCP estimates that the time required to update the reviews is 0.5 minutes per job title × 92 occupations = 46 × 97,459/60 = 74,719 total Federal contractor hours.

OFCCP estimates that the remaining 9% of contractors, or 9,746, will have some changes to their job descriptions in a given year. We estimate this 9% of contractors will have changes to an average of 20% of their job titles, and that it will take 10 minutes on average to review the mental and physical job qualifications for each. Therefore, 10 minutes × (20% of 92 job titles) × 9,746 contractors/60 minutes per hour = 29,888 total Federal contractor hours.

□ Contractor must document the results of its annual review of physical and mental job qualifications, and document any employment action taken on the basis of a believed "direct threat." (.44(c)).

OFCCP estimates that it will take the contractor 1 minute per job qualification to save the information for recordkeeping purposes. Therefore, 1 minute × 92 occupations equals 92 minutes × 108,288 contractors/60 minutes equals 166,042 total Federal contractor hours.

□ Contractor must enter into linkage agreement with nearest LVER, one of the organizations listed in (f)(1), and an organization listed in the National Resource Directory (.44(f)(1)).

Therefore, each contractor must enter into 3 linkage agreements. Linkage Agreement means an agreement describing the connection between the contractor and appropriate recruitment and/or training sources.

The contractor has a variety of ways to establish VEVRAA linkage agreements. The contractor can receive nationwide assistance from OFCCP Compliance Officers (COs) to help it establish the 3 linkage agreements. Secondly, during the normal course of an OFCCP compliance review, the CO will contact all appropriate linkage resources to obtain specific information on availability of applicants and potential trainees for positions in the contractor's labor force. If possible, the CO will arrange a meeting between the recruitment/referral resources and the contractor.

Where a resource indicates that it can provide applicants or trainees, the CO will include the contractor's commitment to utilize the linkage source along with other actions in the Letter of Commitment or in the Conciliation Agreement.

OFCCP estimates that 30% of the contractors, or 32,486, will accept OFCCP assistance to help set up their linkage agreements and it will take these contractors on average 1.5 hours to establish one new linkage agreement. For the remaining 75,802 contractors, OFCCP estimates that establishing a new linkage agreement will take an average of 5.5 hours. Beyond the first year after this rule becomes effective, it is estimated the contractor will set up one new agreement a year. It is estimated that maintaining a single, ongoing linkage agreement will take an average of 15 minutes for all 108,288 contractors.

For those contractors setting up linkage agreements on their own, OFCCP estimates that on average, a contractor will establish one new agreement and maintain two ongoing agreements in a given year, which would be 5.5 hours + .25 hours + .25 hours = 6 hours. If the contractor establishes linkage agreements with OFCCP's assistance, we estimate an annual average of 1.5 hours per contractor to establish a new linkage agreement and .25 hours to maintain each of the two ongoing linkage agreements, which would be 1.5 hours + .25 hours + .25 hours = 2 hours. Therefore, 6 hours times 75,802 contractors equals 454,812 hours, and 32,486 times 2 hours equals 64,972 hours, for a total of 519,784 Federal contractor hours to establish and maintain three linkage agreements under the proposed NPRM.

□ Contractor must send written notification of company AAP policies to subcontractors, vendors, and suppliers (.44(f)(1)).

OFCCP estimates that it would take the contractor 5 minutes to prepare the notification and notify its subcontractors via the Internet in a group e-mail, and 1 minute to add or subtract any additions or deletions to the group. Therefore, 6 minutes per contractor times 108,288 equals 649,728 minutes, divided by 60 minutes equals 10,829 total Federal contractor hours.

□ Contractor must document its review outreach and recruitment efforts (.44(f)(3)).

OFCCP estimates that documenting this review of outreach and recruitment will take 5 minutes annually. OFCCP further estimates

that 1% of federal contractors are first-time contractors during an abbreviated AAP year, therefore would not be able to complete an annual outreach and recruitment effort. Therefore, reducing the 108,288 by 1% (1,083 contractors) equals 107,205 contractors, at 5 minutes each equals 536,025 minutes, or 8,934 total Federal contractor hours. The burden and cost of actually conducting the review does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

☐ Contractor must document (f)(1) linkage agreements and maintain these documents for 5 years (.44(f)(4)).

Since establishing a linkage agreement includes its documentation, there is no additional burden for this paragraph beyond that already set forth in the burden calculation for .44(f)(1).

☐ Contractor is required to undertake several efforts to internally disseminate its EEO policy, including, if the contractor is a party to a collective bargaining agreement, meeting with union officials to inform them of the policy. (This is a third party disclosure burden). (.44(g)):

The January 22, 2010 Bureau of Labor Statistics News Release states that in 2009, union membership was 12.3%. In its most recent Supply and Service (S&S) PRA Justification, OFCCP estimated 30 minutes composition time for union notification. For this NPRM, we estimate 15 minutes preparation for this new notification requirement, as contractors party to a collective bargaining agreement already have a notification template in place. We also estimate 15 additional minutes to meet with union officials as they already do so in S&S. The total third party disclosure burden hours would be 108,288 × 12.3% × 30 minutes/60 = 6,660 total Federal contractor hours.

The burden and cost of other requirements of .44(g) does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

☐ Contractor must document internal dissemination efforts in (g), retain these documents for 1–2 years (.44(g)(3))

Since much of the documentation will occur during the preparation time, OFCCP estimates an additional 5 minutes of recordkeeping per contractor, which means 5 minutes × 108,288 = 541,440 minutes/60 = 9,024 total Federal contractor hours.

☐ Contractor must document the actions taken to comply with audit and reporting system, retain these documents for 1–2 years (.44(h))

Since much of the documentation will occur during the annual audit and reporting, OFCCP estimates an additional 5 minutes recordkeeping burden per contractor, which means 5 minutes × 108,288 = 541,440 minutes/60 = 9,024 total Federal contractor hours.

☐ Contractor must identify responsible official for AAP on all internal and external communications regarding the AAP (.44(i))

That official should already be in place for current contractors. For 1% first time contractors, 108,288 × 1% = 1,083 contractors, OFCCP estimates 5 minutes per contractor, or 1,083 × 5 minutes = 5,415 minutes/60 = 90 total Federal contractor hours

☐ Contractor must document its training efforts as set forth by the regulation, and maintain these documents as required by 60–250.80/60–300.80 (.44(j)).

OFCCP estimates that much of the documentation will be included in the training preparation time. OFCCP estimates an additional 5 minutes recordkeeping time per contractor, which means 5 minutes × 108,288 = 541,440 minutes/60 = 9,024 total Federal contractor hours. The burden and cost of the actual training preparation and conducting the training does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

☐ Contractor must make several quantitative tabulations and comparisons using referral data, applicant data, hiring data, and the number of job openings; must maintain these records for 5 years (.44(k))

(1) The number of priority referrals of veterans protected by this part that the contractor received from applicable employment service delivery system(s);

(2) The number of total referrals that the contractor received from applicable employment service delivery system(s);

(3) The ratio of priority referrals of veterans to total referrals (referral ratio);

(4) The number of applicants who self-identified as protected veterans pursuant to § 60–300.42(a), or who are otherwise known as protected veterans;

(5) The total number of job openings and total number of jobs filled;

(6) The ratio of jobs filled to job openings;

(7) The total number of applicants for all jobs;

(8) The ratio of protected veteran applicants to all applicants (applicant ratio);

(9) The number of protected veteran applicants hired;

(10) The total number of applicants hired; and

(11) The ratio of protected veterans hired to all hires (hiring ratio).

The calculations for #5, 6, 7, and 10 are already included in the Executive Order AAP. The calculations for #9 are included in the VETS–100/100A report. Therefore, there is no additional burden for #5, 6, 7, 9, and 10.

The remaining calculations, for #1, 2, 3, 4, 8, and 11, OFCCP estimates at 1 minute each per contractor, or 6 minutes recordkeeping time per contractor, which means 6 minutes × 108,288 = 649,728 minutes/60 = 10,829 total Federal contractor hours.

- *60–250.45/300.45*

☐ Contractor must set benchmarks for hiring annually, which would include reviewing numerous data sources. Contractor must document the benchmarks it sets and the specific criteria it uses, and maintain these records for 5 years. The non-documenting burden and cost associated with the actual setting of the benchmark does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

OFCCP estimates 30 minutes recordkeeping time per contractor documenting the benchmark calculations, which means 30 minutes × 108,288/60 = 54,144 total Federal contractor hours.

- *60–250.60/300.60*

☐ Contractor must provide documents to OFCCP on-site or off-site at OFCCP's request, not at the contractor's option (.60(a)(3))

These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

☐ *New procedure for pre-award compliance evaluations (.60(d))*

These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

- *60–250.80/300.80*

☐ See new 5 year recordkeeping requirements in previous sections.

No additional burden hours as they are included in the individuals calculations above.

- *60–250.81/300.81*

☐ Contractor must provide off-site access to documents if requested by OFCCP. Such records are never requested except during the course of a specific investigation of a particular contractor.

Consequently, these hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

☐ Contractor must specify to OFCCP all formats in which its records are available.

These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

The Department has submitted a copy of the information collections associated with this proposed rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review and approval. In addition to filing comments with OFCCP, interested persons may submit comments about the information collections, including suggestions for reducing their burden, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Room 10235, Washington, DC 20503. Attention: Desk Officer for DOL/OFCCP. To ensure proper consideration comments to OMB should reference ICR reference number: [insert the number from ROCIS when OFCCP creates the package]. Upon receiving OMB approval of the new information, the Department will submit non-substantive change request to OMB Control Numbers ____ in order to remove regulatory citations for any information collected purely under the new collection.

TABLE 1—REPORTING, RECORDKEEPING, AND THIRD PARTY DISCLOSURE BURDEN

Burden description	Section of proposed regulation	One-time burden hours per contractor	Recurring burden hours per contractor	Recurring burden hours per element
Contractor must provide job vacancy information to appropriate employment service delivery system (ESDS) in usable format (¶2 of EO Clause).	60–250.5/300.5	.....	30 minute per contractor. Total Hours 54,144.	
Contractor must provide ESDS additional information, updated on an annual basis (¶4 of EO Clause).	60–250.5/300.5	.....	15 minutes reporting burden per contractor for ESDS. Subtotal Hours 27,072. 5 minutes reporting burden per contractor for outside job search. Subtotal Hours 2,256. Total Hours 29,328.	
Contractor must maintain records, for five years, of the total number of, priority referral of veterans (already must keep applicant data), and ratio of veteran referrals to total referrals (¶5 of EO Clause).	60–250.5/300.5	.....	.....	30 minutes per referral. Total Hours 37,829.
Contractor must include the entire clause verbatim in Federal contracts (.5(d), .5(e)).	60–250.5/300.5	.....	1 minute third party disclosure burden per contractor. Total Hours 1,805.	
Contractor must provide Braille, large print, or other versions of notice so that visually impaired may read the notice themselves (¶10 of EO Clause)..	60–250.5/300.5	.....	.....	10 minutes per accommodation request. Total Hours 1,033.
Contractor must provide notice to offsite employees (¶10 of EO Clause).	60–250.5/300.5	5 minutes per contractor. Total Hours 902.		
Contractor must state in all solicitations and advertisements that it is an EEO employer of veterans (¶13 of EO Clause).	60–250.5/300.5	1 minute third party disclosure burden per contractor. Total Hours 1,805.		
Contractor must inform employees who do not work at contractor's physical establishment regarding the availability of AAP for review (.41).	60–250.41/300.41	5 minutes per contractor. Total Hours 902.		
Contractor must invite all applicants to self-identify as protected veteran prior to offer of employment (.42(a)).	60–250.42/300.42	.....	.....	1 minute per application. Total Hours 1,805.
Contractor is required to seek advice of applicants regarding appropriate accommodations, when applicable (.42(d)).	60–250.42/300.42	.....	.....	1 minute per accommodation. Total Hours 1,033.
Contractor must maintain self-identification data (.42(e)).	60–250.42/300.42	.....	1 minute per contractor. Total Hours 1,805.	
Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)).	60–250.44/300.44	.....	.....	10 minutes per accommodation request. Total Hours 1,033.

TABLE 1—REPORTING, RECORDKEEPING, AND THIRD PARTY DISCLOSURE BURDEN—Continued

Burden description	Section of proposed regulation	One-time burden hours per contractor	Recurring burden hours per contractor	Recurring burden hours per element
Contractor must review personnel processes annually, and is required to go through a specific analysis for doing so which would include: (1) identifying vacancies and training programs; (2) providing a statement of reasons for rejecting protected veterans; and (3) describing the nature and type of accommodations for (special) disabled veterans (.44(b)).	60–250.44/300.44	.....	15 minutes per contractor (training) Subtotal Hours 27,072. 30 minutes per contractor (statement of reasons) Subtotal Hours 54,144.	15 minutes per job listing (vacancies). Subtotal Hours 18,914. 30 minutes per accommodation request Subtotal Hours 3,100. Total Hours 103,230. .5 minutes per occupation (no changes). Subtotal Hours 74,719. 10 minutes per occupation, 20% of occupations. Subtotal Hours 29,888. Total Hours 121,213. 1 minute per occupation. Total Hours 166,042.
Contractor must review physical and mental job qualifications annually (.44(c))..	60–250.44/300.44	10 minutes per occupation for first time contractors. Subtotal Hours 16,606.	.....	
Contractor must document the results of its annual review of physical and mental job qualifications, and document any employment action taken on the basis of a believed "direct threat." (.44(c)).	60–250.44/300.44	.....	.....	
Contractor must enter into linkage agreement with nearest LVER, one of the organizations listed in (f)(1), and an organization listed in the National Resource Directory (.44(f)(1)).	60–250.44/300.44	.....	2 hours per contractor with OFCCP assistance. Subtotal Hours 64,972. 6 hours per contractor without OFCCP assistance. Subtotal Hours 454,812. Total Hours 519,784.	
Contractor must send written notification of company AAP policies to subcontractors, vendors, and suppliers (.44(f)(1)).	60–250.44/300.44	.....	6 minutes per contractor. Total Hours 10,829.	
Contractor must review outreach and recruitment efforts on an annual basis and evaluate their effectiveness; contractor must identify and implement further outreach efforts if existing efforts are found ineffective (.44(f)(3)).	60–250.44/300.44	.....	5 minutes per contractor (non first time contractors). Total Hours 8,934.	
If the contractor is a party to a collective bargaining agreement it must meet with union officials to inform them of the policy (.44(g)).	60–250.44/300.44	.....	30 minutes per unionized contractor. Total third party disclosure burden hours 6,660.	
Contractor must document internal dissemination efforts in (g), retain these documents for 1–2 years (.44(g)(3)).	60–250.44/300.44	.....	5 minutes per contractor. Total Hours 9,024.	
Contractor must document the actions taken to comply with audit and reporting system, retain these documents for 1–2 years (.44(h)).	60–250.44/300.44	.....	5 minutes per contractor. Total Hours 9,024.	

TABLE 1—REPORTING, RECORDKEEPING, AND THIRD PARTY DISCLOSURE BURDEN—Continued

Burden description	Section of proposed regulation	One-time burden hours per contractor	Recurring burden hours per contractor	Recurring burden hours per element
Contractor must identify responsible official for AAP on all internal and external communications regarding the AAP (.44(i)).	60–250.44/300.44	5 minutes per first time contractor. Total Hours 90.		
Contractor must document its training efforts as set forth by the reg, and maintain these documents for 1–2 years (.44(j)).	60–250.44/300.44	.....	5 minutes per contractor. Total Hours 9,024.	
Contractor must make several quantitative tabulations and comparisons using referral data, applicant data, hiring data, and the number of job openings; must maintain these records for 5 years (.44(k)).	60–250.44/300.44	.....	6 minutes per contractor. Total Hours 10,829.	
Contractor must document the benchmarks it sets and the specific criteria it uses, and maintain these records for 5 years (.45).	60–250.45/300.45	.....	30 minutes per contractor. Total Hours 54,144.	
Total Recordkeeping burden hours.	1,122,653			
Total Reporting burden hours.	29,328			
Total Third Party burden hours.	10,270			
Total all hours	1,162,251			

TABLE 2—BURDEN FOR PROTECTED VETERANS

Burden description	Section of proposed regulation	Burden hours per protected veteran
Protected veteran must provide DD–214 to contractor to document status as a protected veteran.	*60–250.42/300.42*	1 minute per individual. Total hours 1,261.
Disabled veteran must provide documentation for reasonable accommodation.	*60–250.42/300.42*	1 minute per individual. Total hours 103.
Total Burden Hours	.....	1,364.

The estimated annualized cost to respondent contractors is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (June 2010), which lists total compensation for management, professional, and related occupations as $48.74 per hour and administrative support as $23.25 per hour. OFCCP estimates that 52% percent of the burden hours will be management, professional, and related occupations and 48% percent will be administrative support. We have calculated the total estimated annualized cost as follows:

Mgmt. Prof. 1,162,251 hours × .52 × $48.74 = $29,457,019

Adm. Supp. 1,162,251 hours × .48 × $23.25 = $12,970,721

Operations & Maintenance Cost (*see* discussion below) $ 418,129

Total annualized cost estimate = $42,845,869

Estimated average cost per establishment is: $42,845,869/108,288 = $396

Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the time burden calculated above associated with this collection.

60–250.5/300.5

Contractor must provide EO Clause notices to employees and applicants, including alternative formats such as copy of Braille, large print, or other versions of notice so that visually impaired protected veterans may read the notice themselves (¶ 10 of EO Clause). OFCCP estimates that the contractor will have some operations and maintenance cost associated with posting the EO Clause. We estimate an average copying cost of 10 cents per page. We estimate the average size of the EO Clause to be 3 pages. The estimated total cost to contractors will be: 3 pages × $.10 × 108,288 Federal contractor establishments = $32,486.

OFCCP estimates that the contractor will have some operations and maintenance costs associated with providing the EO Clause in an alternative format. We estimate that the cost of an alternative format, such as Braille or audio, to be $1.00 per contractor. The estimated total cost to contractors will be: $1.00 × 108,288 Federal contractor establishments = $108,288.

60–250.42/300.42

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitation to self-identify. The

contractors must invite all applicants with the pre-offer invitation, and must also invite those individuals who were offered positions and declared themselves protected veterans with the post-offer invitation. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. Therefore, we estimate 1 page for the pre-offer invitation printed for 10 applicants per year, and 2 pages for the post-offer invitation printed for 2 applicants per year. We also estimate an average copying cost of 10 cents per page. The estimated total cost to contractors will be: pre-offer—108,288 × 1 × 10 × $.10 = $108,288; post-offer—108,288 × 2 × 2 × $10 = $43,315; total cost $108,288 + $43,315 = $151,603.

60–250.44/300.44

Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)). OFCCP estimates that the contractor will have some operations and maintenance costs associated with providing the AA policy statement. We estimate that the cost of an alternative format, such as Braille or audio, to be $1.00 per contractor. The estimated total cost to contractors will be: $1.00 × 108,288 Federal contractor establishments = $108,288.

60–250.44/300.44

Contractor must provide its AAP to OFCCP during a desk audit. For Supply & Service compliance evaluations, the contractor copies its AAPs and mails the AAPs to OFCCP. We estimate an average copying cost of $.07 per page. We estimate the average size of an AAP to be 7 pages. The estimated total copying cost to contractors will be: 7 pages × $.07 × 5,004 (FY 2009 Compliance Evaluations) = $2,452. In addition, we estimate an average mailing cost of $3.00 per contractor. The total mailing cost for contractors will be $3.00 × 5,004 = $15,012. The total estimated costs would be $2,452 + $15,012 = $17,464.

TABLE 3—OPERATIONS AND MAINTENANCE COSTS

Contractor must provide EO Clause to employees and applicants (¶10 of EO Clause).	60–250.5/300.5	$32,486
Contractor must provide Braille, large print, or other versions of EO Clause so that visually impaired may read the notice themselves (¶10 of EO Clause).	60–250.5/300.5	108,288
Contractor must invite all applicants to self-identify as protected veteran prior to offer of employment (.42(a)).	60–250.42/300.42	151,603
Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)).	60–250.44/300.44	108,288
Copying and mailing costs of AAPs (.44)	60–250.44/300.44	17,464
Total O&M Costs		418,129

These paperwork burden estimates are summarized as follows:

Type of Review: New collection (Request for new OMB Control Number).

Agency: Office of Federal Contract Compliance Programs, Department of Labor.

Title: Disclosures and Recordkeeping Under Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans.

OMB ICR Reference Number: [Provide from ROCIS].

Affected Public: Business or other for-profit; individuals.

Estimated Number of Annual Responses: [Provide total from ROCIS].

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 1,163,615.

Estimated Total Annual Burden Cost (Start-up, capital, operations, and maintenance): $418,129.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this NPRM does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and Tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." This proposed rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

This NPRM does not have Tribal implications under Executive Order 13175 that would require a Tribal summary impact statement. The NPRM would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

Effects on Families

The undersigned hereby certifies that the NPRM would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

Executive Order 13045 (Protection of Children)

This NPRM would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this NPRM in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the

regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and DOL NEPA procedures, 29 CFR part 11, indicates the NPRM would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This NPRM is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This NPRM is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This NPRM was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The NPRM was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 41 CFR Parts 60–250 and 60–300

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, and Veterans.

Patricia Shiu,

Director, Office of Federal Contract Compliance Programs.

Accordingly, under authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 60, the second alternative proposed part 60–250 (as discussed in the Summary section) and part 60–300, is proposed to read as follows:

PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, RECENTLY SEPARATED VETERANS, AND ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.

Subpart B—Discrimination Prohibited

Subpart C—Affirmative Action Program

Subpart D—General Enforcement and Complaint Procedures

Subpart E—Ancillary Matters

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 (2001) (amended 2002); 38 U.S.C. 4212 (2001) (amended 2002); E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–250.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with 38 U.S.C. 4212 (Section 4212), which prohibits discrimination against protected veterans and requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified protected veterans. Special disabled veterans, veterans of the Vietnam era, recently separated veterans, and active duty wartime or campaign badge veterans are protected veterans under Section 4212.

(b) *Applicability.* This part applies to any Government contract or subcontract of $25,000 or more, entered into before December 1, 2003, for the purchase, sale or use of personal property or nonpersonal services (including construction), except that the regulations in 41 CFR 60–300, and not this part, apply to such a contract or subcontract that is modified on or after December 1, 2003 and the contract or subcontract as modified is in the amount of $100,000 or more: *Provided*, that subpart C of this part applies only as described in Sec. 60–250.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of special disabled veterans, veterans of the Vietnam era, recently separated veterans, or active duty wartime or

campaign badge veterans as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–250.2 Definitions.

For the purpose of this part:

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2001).

(b) *Active duty wartime or campaign badge veteran* means a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

(c) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

(d) *Contract* means any Government contract or subcontract.

(e) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $25,000 or more.

(f) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(g) *Director* means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

(h) [Reserved].

(i) *Employment service delivery system* means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

(j) *Equal opportunity clause* means the contract provisions set forth in § 60–250.5, "Equal opportunity clause."

(k) *Essential functions*—(1) *In general.* The term essential functions means fundamental job duties of the employment position the special disabled veteran holds or desires. The term essential functions does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including, but not limited to, the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(l) *Government* means the Government of the United States of America.

(m) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term "*Government contract*" does not include agreements in which the parties stand in the relationship of employer and employee, and Federally assisted contracts.

(1) *Construction*, as used in the definition of Government contract and subcontract of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(4) *Nonpersonal services*, as used in the definition of Government contract and subcontract of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Person*, as used in the definition of Government contract and subcontract of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(6) *Personal property*, as used in the definition of Government contract and subcontract of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(n) *Linkage Agreement* means an agreement describing the connection between contractors and appropriate recruitment and/or training sources. A linkage agreement is to be used by contractors as a source of potential applicants for the covered groups the contractor is interested in, as required by § 60–250.44(f). The contractor's representative that signs the linkage agreement should be the company official responsible for the contractor's affirmative action program and/or has hiring authority.

(o) *Prime contractor* means any person holding a contract of $25,000 or more, and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," includes any person who has held a contract subject to the Act.

(p) *Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of the Act; specifically, a veteran who may be classified as a "special disabled veteran," "veteran of

the Vietnam era," "recently separated veteran," and/or an "active duty wartime or campaign badge veteran," as defined by this section.

(q) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(r) *Qualified special disabled veteran* means a special disabled veteran who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(s) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a special disabled veteran to be considered for the position such applicant desires; [6]

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified special disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a special disabled veteran to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees who are not special disabled veterans.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by special disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for special disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified special disabled veteran in need of the accommodation.[7] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(t) *Recently separated veteran* means any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.

(u) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(v) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(w)(1*) Special disabled veteran* means:

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more; or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(2) Serious employment handicap, as used in paragraph (w)(1)(B)) of this section, means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.

(x) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(y) *Subcontractor* means any person holding a subcontract of $25,000 or more and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," any person who has held a subcontract subject to the Act.

(z) *TAP* means the Department of Defense's Transition Assistance Program, or any successor programs thereto. The TAP was designed to smooth the transition of military personnel and family members leaving active duty via employment workshops and individualized employment assistance and training.

(aa) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(bb) *United States,* as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

[6] A contractor's duty to provide a reasonable accommodation with respect to applicants who are special disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Special disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

[7] Contractors must engage in such an interactive process with a special disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

(cc) *Veteran* means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

(dd) *Veteran of the Vietnam era* means a person who:

(1) Served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

§ 60–250.3 [Reserved]

§ 60–250.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $25,000 or more.* Contracts and subcontracts of $25,000 or more are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $25,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $25,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term "employment activities within the United States" includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

(3) *Facilities not connected with contracts.* The Director may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–250.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Equal Opportunity for Section 4212 Protected Veterans [8]

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or active duty wartime or campaign badge veteran (hereinafter collectively referred to as "protected veteran(s)") in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures.

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

iii. Rates of pay or any other form of compensation and changes in compensation.

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

v. Leaves of absence, sick leave, or any other leave.

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

viii. Activities sponsored by the contractor including social or recreational programs.

ix. Any other term, condition, or privilege of employment.

[8] The definitions set forth in 41 CFR 60–250.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local employment service office of the state employment security agency wherein the opening occurs. Further, listing employment openings with the state workforce agency job bank where the opening occurs or with the local employment service delivery system where the opening occurs will satisfy the requirements to list jobs with the appropriate employment service office. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in the manner and format required by the appropriate employment service delivery system to permit that system to provide priority referral of veterans protected by Section 4212 for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation only if the privately run job service or exchange provides the information to the appropriate employment service delivery system in that manner and format in which the employment service delivery system requires.

3. Listing of employment openings with the local employment service office pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever a contractor becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be updated on an annual basis. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.

5. The contractor shall maintain records on an annual basis of the number of priority referrals of veterans protected by Section 4212 that it receives from each employment service delivery system, the total number of referrals it receives from each employment service delivery system, and the ratio of priority referrals to total referrals. The contractor shall maintain these records for a period of five (5) years.

6. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

7. As used in this clause: i. *All employment openings* includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and top management* means any employee: (a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and (b) who customarily and regularly directs the work of two or more other employees therein; and (c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (d) who customarily and regularly exercises discretionary powers; and (e) who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his or her hours of work in the work week to activities which are not directly and closely related to the performance of the work described in (a) through (d) of this paragraph 7.ii; Provided, that (e) of this paragraph 7.ii shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he or she is employed.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

8. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

10. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are special disabled veterans are provided the notice in a form that is accessible and understandable to the special disabled veteran (e.g., providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

11. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 4212 and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

12. The contractor will include the provisions of this clause in every subcontract or purchase order of $25,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to Section 4212, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

13. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive

consideration for employment without regard to their status as a protected veteran.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as must be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It shall be necessary to include the equal opportunity clause verbatim in the contract.

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in Sec. 60–250.66 as may be ordered by the Secretary or the Director.

Subpart B—Discrimination Prohibited

§ 60–250.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–250.21 Prohibitions.

The term "discrimination" includes, but is not limited to, the acts described in this section and § 60–250.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a protected veteran.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of that individual's status as a protected veteran. For example, the contractor may not segregate protected veterans as a whole, or any classification of protected veterans, into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements*—(1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a protected veteran to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase "contractual or other arrangement or relationship" includes, but is not limited to, a relationship with: An employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a protected veteran; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a protected veteran.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known protected veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified special disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an applicant or employee who is a qualified special disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified special disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified special disabled veteran, unless the individual subsequently provides and/or pays for a reasonable accommodation as described in paragraph 4 of Appendix A of this part.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status

as protected veterans unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a special disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as protected veterans but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a special disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a protected veteran for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a special disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to protected veterans, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–250.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (*See* § 60–250.2(f) defining *direct threat.*).

§ 60–250.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a special disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a special disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are special disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–250.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–250.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor: (1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other

Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of Sec. 60–250.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–250.23(b)(5) and 60–250.23(d)(2).

§ 60–250.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor shall not deny a qualified special disabled veteran equal access to insurance or subject a qualified special disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–250.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $50,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to § 60–250.44(i).

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–250.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment. In the event that the contractor has employees who do not work at a physical establishment, the contractor shall inform such employees about the availability of the affirmative action program by other means.

§ 60–250.42 Invitation to self-identify.

(a) *Pre-offer.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a protected veteran who may be covered by the Act. This invitation may be included in the application materials for the position, but in any circumstance shall be provided to applicants prior to making an offer of employment to a job applicant. Additionally, the contractor may invite special disabled veterans to self-identify as such prior to making a job offer when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for special disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, State, or local law requiring affirmative action for special disabled veterans.

(b) *Post-offer.* At any time after the offer of employment but before the applicant begins his or her job duties, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a special disabled veteran, veteran of the Vietnam era, recently separated veteran, or active duty wartime or campaign badge veteran who may be covered by the Act.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. (An acceptable form for such an invitation is set forth in Appendix B of this part.)

(d) If an applicant identifies himself or herself as a special disabled veteran in the post-offer self-identification detailed in paragraph (b) of this section, the contractor must inquire with the applicant whether an accommodation is necessary, and if so, must engage in an interactive process with applicant regarding reasonable accommodation. The contractor may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file in accordance with § 60–250.23(d) on persons who have self-identified as special disabled veterans.

(e) The contractor shall keep all information on self-identification

confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section relieves the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be protected veterans.

(g) Nothing in this section relieves the contractor from liability for discrimination under the Act.

§ 60–250.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act, contractors shall not discriminate against protected veterans, and shall take affirmative action to employ and advance in employment qualified protected veterans at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–250.20.

§ 60–250.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are special disabled veterans are provided the notice in a form that is accessible and understandable to the special disabled veteran (*e.g.,* providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). The policy statement shall indicate the chief executive officer's support for the contractor's affirmative action program, provide for an audit and reporting system (*see* paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (*see* paragraph (i) of this section). Additionally, the policy shall state, among other things, that the contractor will: Recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to protected veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of Section 4212 or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by Section 4212 or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for protected veterans; or

(4) Exercising any other right protected by Section 4212 or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a protected veteran is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in issue. The contractor shall ensure that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall review such processes on at least an annual basis and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. These procedures shall, at a minimum, include the following steps:

(1) For each applicant who is a protected veteran, the contractor shall be able to identify:

(i) each vacancy for which the applicant was considered; and

(ii) each training program for which the applicant was considered.

(2) For each employee who is a protected veteran, the contractor shall be able to identify:

(i) each promotion for which the protected veteran was considered; and

(ii) each training program for which the protected veteran was considered.

(3) In each case where an employee or applicant who is a protected veteran is rejected for employment, promotion, or training, the contractor shall prepare a statement of the reason as well as a description of the accommodations considered (for a rejected special disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, shall be treated as confidential medical records in accordance with § 60–250.23(d). These materials shall be available to the applicant or employee concerned upon request.

(4) Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible to place a special disabled veteran on the job, the contractor shall make a record containing a description of the accommodation. The record shall be treated as a confidential medical record in accordance with § 60–250.23(d).

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the annual review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified special disabled veterans, they are job-related for the position in question and are consistent with business necessity. The contractor shall document the methods used to complete the annual review, the results of the annual review, and any actions taken in response. These documents shall be retained as employment records subject to the recordkeeping requirements of § 60–250.80.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified special disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor has the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (*See* § 60–

250.2(f) defining direct threat.) Once the contractor believes that a direct threat exists, the contractor shall create a statement of reasons supporting its belief, addressing each the criteria for "direct threat" listed in § 60–250.2(f). This statement shall be treated as a confidential medical record in accordance with § 60–250.23, and shall be retained as an employment record subject to the recordkeeping requirements of § 60–250.80.

(d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–250.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified special disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a protected veteran.

(f) *External dissemination of policy, outreach and positive recruitment.*

(1) *Required outreach efforts.* The contractor shall undertake the outreach and positive recruitment activities listed below:

(i) The contractor shall establish linkage agreements enlisting the assistance and support of the Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment; and at least one of the following persons and organizations in recruiting and developing training opportunities for protected veterans to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(A) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(B) The veterans' counselors and coordinators (Vet-Reps) on college campuses;

(C) The service officers of the national veterans' groups active in the area of the contractor's establishment;

(D) Local veterans' groups and veterans' service centers near the contractor's establishment; and

(E) The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP.

(ii) The contractor shall also consult the Employer Resources section of the National Resource Directory (*http://www.nationalresourcedirectory.gov/employment/employer_resources*), or any future service that replaces or complements it, and establish a linkage agreement with one or more of the veterans' service organizations listed on the directory, other than the agencies listed in (A) through (E) above, for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(iii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) *Suggested outreach efforts.* The contractor should consider taking the actions listed below to fulfill its commitment to provide meaningful employment opportunities to protected veterans:

(i) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(ii) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are protected veterans.

(iii) An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating special disabled veterans.

(iv) Protected veterans should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(v) The contractor should take any other positive steps it deems necessary to attract qualified protected veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for any of the classifications of protected veterans.

(vi) The contractor, in making hiring decisions, shall consider applicants who are known protected veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(3) *Assessment of External Outreach and Recruitment Efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts shall be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) *Recordkeeping Obligation.* The contractor shall document all linkage agreements and all other activities it undertakes to comply with the obligations of this paragraph, and retain these documents for a period of five (5) years.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation

in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified protected veterans. The contractor shall schedule meetings on an annual basis with all employees to discuss its affirmative action policies, explain contractor and individual employee responsibilities under these policies, and identify opportunities for advancement;

(iii) Conduct meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(iv) Discuss the policy thoroughly in any employee orientation and management training programs;

(v) If the contractor is party to a collective bargaining agreement, it shall meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(3) The contractor is encouraged to additionally implement and disseminate this policy internally as follows:

(i) If the contractor has a company newspaper, magazine, annual report, or other paper or electronic publication distributed to employees, it should publicize its affirmative action policy in these publications, and include in these publications, where appropriate, features on special disabled veteran employees and articles on the accomplishments of protected veterans, with their consent.

(4) The contractor shall document those activities it undertakes to comply with the obligations of paragraph (g), and retain these documents as employment records subject to the recordkeeping requirements of § 60–250.80.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records subject to the recordkeeping requirements of § 60–250.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity shall appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* In addition to the training set forth in paragraph (g)(2)(ii) of this section, all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented. This training shall include, but not be limited to, the benefits of employing protected veterans, appropriate sensitivity toward protected veteran applicants and employees, and the legal responsibilities of the contractor and its agents regarding protected veterans generally and special disabled veterans specifically, such as a reasonable accommodation for qualified special disabled veterans and the related and responsibilities of contractors and protected veterans. The contractor shall create contemporaneous records documenting the specific subject matter(s) covered in the training, who conducted the training, who received the training, and when the training took place. The contractor shall retain these documents, and any written or electronic materials used for the training required by this section, as employment records subject to the recordkeeping requirements of § 60–250.80.

(k) *Data Collection Analysis.* The contractor shall document and maintain the following computations or comparisons pertaining to applicants and hires on an annual basis:

(1) The raw number of priority referrals of veterans protected by this part that the contractor received from applicable employment service delivery system(s);

(2) The number of total referrals that the contractor received from applicable employment service delivery system(s);

(3) The ratio of priority referrals of veterans to total referrals (referral ratio);

(4) The number of applicants who self-identified as protected veterans pursuant to § 60–250.42(a), or who are otherwise known as protected veterans;

(5) The total number of job openings and the total number of jobs filled;

(6) The ratio of jobs filled to job openings;

(7) The total number of applicants for all jobs;

(8) The ratio of protected veteran applicants to all applicants (applicant ratio);

(9) The number of protected veteran applicants hired;

(10) The total number of applicants hired; and

(11) The ratio of protected veterans hired to all hires (hiring ratio). The number of hires shall include all employees as defined in § 60–250.2(h).

§ 60–250.45 Contractor established benchmarks for hiring.

(a) *Purpose:* The purpose of establishing benchmarks is to create a quantifiable method by which the contractor can measure its progress toward achieving equal employment opportunity for protected veterans.

(b) Hiring benchmarks, expressed as the percentage of total hires that are protected veterans that the contractor will seek to hire, shall be established by the contractor on an annual basis. In establishing these benchmarks, contractors shall take into account the following information:

(1) The average percentage of veterans in the civilian labor force in the State(s) where the contractor is located over the preceding three years, as calculated by the Bureau of Labor Statistics and published on OFCCP Web site;

(2) The number of veterans, over the previous four quarters, who were participants in the employment service delivery system in the State where the contractor is located, as tabulated by the Veterans' Employment and Training Service and published on OFCCP Web site;

(3) The referral ratio, applicant ratio, and hiring ratio for the previous year, as set forth in § 60–250.44(k);

(4) The contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as set forth in § 60–250.44(f)(3); and

(5) Any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans.

(c) The contractor shall document the hiring benchmark it has established each year, detailing each of the factors that it considered in establishing the hiring benchmark and the relative significance of each of these factors. The contractor shall retain this document for a period of five (5) years.

Subpart D—General Enforcement And Complaint Procedures

§ 60–250.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. OFCCP may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this Part. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 4212 and its regulations;

(3) *Compliance check.* A determination of whether the contractor has maintained records consistent with § 60–250.80; OFCCP may request the documents be provided either on-site or off-site; or

(4) *Focused review.* A review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–250.62.

(c) VETS–100 Report. During a compliance evaluation, OFCCP may verify whether the contractor has complied with its obligation, pursuant to 41 CFR part 61–250, to file its annual Veterans' Employment Report (VETS–100 Report) with the Veterans' Employment and Training Service (VETS). If the contractor has not filed its report, OFCCP will request a copy from the contractor. If the contractor fails to provide a copy of the report to OFCCP, OFCCP will notify VETS.

(d) *Pre-award compliance evaluations.* Each agency will include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should total $10 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of $10 million or more will be subject to a compliance evaluation before the award of the contract unless OFCCP has conducted an evaluation and found them to be in compliance with Section 4212 within the preceding 24 months. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. Within 15 days of the notice OFCCP will inform the awarding agency of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a pre-award compliance evaluation, OFCCP will be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance will be presumed and the awarding agency is authorized to proceed with the award.

§ 60–250.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state

employment service delivery system shall cooperate with the Director in the investigation of any complaint.

(b) *Contents of complaints.*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a protected veteran. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed, indicating the veteran's level (by percentage) of disability, and whether the veteran has been determined by the Department of Veterans Affairs to have a serious employment handicap under 38 U.S.C. 3106;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–250.65(a)(1), the complainant and contractor shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–250.62.

§ 60–250.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

§ 60–250.63 Violation of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–250.64 Show cause notices.

When the Director has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (*see* § 60–250.65).

§ 60–250.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their

behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–250.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors, and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to "Executive Order 11246" shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212 (2001)); references to "equal opportunity clause" shall mean the equal opportunity clause published at § 60–250.5; and references to "regulations" shall mean the regulations contained in this part.

§ 60–250.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Director, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–250.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–250.67 Notification of agencies.

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–250.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Director may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Director shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–250.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for protected veterans, or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Director against any contractor who violates this obligation.

§ 60–250.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–250.80 Recordkeeping.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period will be one year from the date of

the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. Records required by §§ 60–250.44(f)(4), 60–250.44(k), 60–250.45(c), and Paragraph 5 of the equal opportunity clause in § 250.5(a) shall be maintained by all contractors for a period of five years from the date of the making of the record.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by this part constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

§ 60–250.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material OFCCP deems relevant to the matter under investigation and pertinent to compliance with the Act or this part. Contractors must also provide OFCCP access to these materials, including electronic records, off-site for purposes of conducting compliance evaluations and complaint investigations. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which its records and other information are available. The contractor must provide records and other information in any available format requested by OFCCP. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–250.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–250.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Director.

§ 60–250.84 Responsibilities of local employment service offices.

(a) Local employment service offices shall refer qualified protected veterans to fill employment openings listed by contractors with such local offices pursuant to the mandatory listing requirements of the equal opportunity clause, and shall give priority to protected veterans in making such referrals.

(b) Local employment service offices shall contact employers to solicit the job orders described in paragraph (a) of this section. The state employment security agency shall provide OFCCP upon request information pertinent to whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

Appendix A to Part 60–250—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. *See* § 60–250.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under Section 4212, like reasonable accommodation required under section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to Section 4212 and section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor shall make an inquiry of a special disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" special disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–250.2(r), a special disabled veteran is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the special disabled veteran is qualified with respect to that

process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be special disabled veterans. As stated in § 60–250.42 (*see* also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are a special disabled veteran who may be covered by the Act and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor must seek the advice of special disabled veterans who "self-identify" in this way as to reasonable accommodation. Moreover, § 60–250.44(d) provides that if an employee who is a known special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a special disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a special disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees who are special disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are special disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.,* the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the special disabled veteran must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for "reasonable accommodation" in § 60–250.2(s) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor must consult with the special disabled veteran in deciding on the reasonable accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice), 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1–800–526–7234 or 1–800–232–9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a special disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by special disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–250.2(s) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified special disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a special disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, *i.e.,* those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind special disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the special disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit special disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or special disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the special disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known special disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are special disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status,

etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" must be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned special disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not special disabled veterans. It should also be noted that the contractor is not required to promote a special disabled veteran as an accommodation.

11. With respect to the application process, reasonable accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to special disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a special disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a special disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–250—Sample Invitation to Self-Identify

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4212 (Section 4212), as amended, which requires Government contractors to take affirmative action to employ and advance in employment: (1) Qualified special disabled veterans; (2) veterans of the Vietnam era; (3) recently separated veterans; and (4) active duty wartime or campaign badge veterans. These classifications are defined as follows:

- A "qualified special disabled veteran" means someone who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position, and also is one of the following:
- A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:
- (A) Rated at 30 percent or more; or
- (B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (defined as a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.); or
- A person who was discharged or released from active duty because of a service-connected disability.

A "veteran of the Vietnam era" means a person who:

- Served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred:
- In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- Between August 5, 1964, and May 7, 1975, in all other cases; or
- Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed:
- In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
- Between August 5, 1964, and May 7, 1975, in all other cases.
- A "recently separated veteran" means any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.
- An "active duty wartime or campaign badge veteran" means a veteran who served in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

2. [THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING THE "PRE–OFFER" INVITATION TO PROTECTED VETERANS REQUIRED BY 41 CFR 60–250.42(a). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERANS SET FORTH IN PARAGRAPH 1 MUST ACCOMPANY THIS SELF-IDENTIFICATION REQUEST.] If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below. As a Government contractor subject to Section 4212, we request this information in order to measure the effectiveness of the outreach and positive recruitment efforts we undertake pursuant to Section 4212.

[ ] I IDENTIFY AS ONE OR MORE OF THE CLASSIFICATIONS OF PROTECTED VETERAN LISTED ABOVE
[ ] I AM NOT A PROTECTED VETERAN
[ ] I CHOOSE NOT TO PROVIDE THIS INFORMATION

[THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING THE "POST–OFFER" INVITATION TO PROTECTED VETERANS REQUIRED BY 41 CFR 60–250.42(b). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERANS SET FORTH IN PARAGRAPH 1 MUST ACCOMPANY THIS SELF-IDENTIFICATION REQUEST.] As a Government contractor subject to Section 4212, we are required to submit a report (VETS–100) to the United States Department of Labor each year identifying the number of our employees belonging to each "protected veteran" category. If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below.

I BELONG TO THE FOLLOWING CLASSIFICATIONS OF PROTECTED VETERANS (CHOOSE ALL THAT APPLY):

[ ] QUALIFIED SPECIAL DISABLED VETERAN
[ ] VETERAN OF THE VIETNAM ERA
[ ] RECENTLY SEPARATED VETERAN
[ ] ACTIVE WARTIME OR CAMPAIGN BADGE VETERAN

[ ] I am a protected veteran, but I choose not to self-identify the classifications to which I belong.
[ ] I am NOT a protected veteran.
[ ] I choose not to provide this information.

If you are a special disabled veteran it would assist us if you tell us whether there are accommodations we could make that would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, changes in the way the job is customarily performed, provision of personal assistance services or other accommodations. This information will assist us in making reasonable accommodations for your disability.

3. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

4. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

5. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of special disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by the Office of Federal Contract Compliance Programs, or enforcing the Americans with Disabilities Act, may be informed.

6. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

Subpart A—Preliminary Matters, Equal Opportunity Clause

Sec.

Subpart B—Discrimination Prohibited

Subpart C—Affirmative Action Program

Subpart D—General Enforcement and Complaint Procedures

Subpart E—Ancillary Matters

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

Subpart A—Preliminary Matters, Equal Opportunity Clause

§ 60–300.1 Purpose, applicability and construction.

(a) *Purpose.* The purpose of the regulations in this part is to set forth the standards for compliance with 38 U.S.C. 4212 (Section 4212), which prohibits discrimination against protected veterans and requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified protected veterans. Disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans are protected veterans under Section 4212.

(b) *Applicability.* This part applies to any Government contract or subcontract of $100,000 or more, entered into or modified on or after December 1, 2003, for the purchase, sale or use of personal property or nonpersonal services (including construction): Provided, that subpart C of this part applies only as described in Sec. 60–300.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part. Any contractor or subcontractor whose only contract(s) for the purchase, sale or use of personal property and nonpersonal services (including construction) was entered into before December 1, 2003 (and not modified as described above) must follow part 60–250. Any contractor or subcontractor who has contracts for the purchase, sale or use of personal property and nonpersonal services (including construction) that were entered into before December 1, 2003 (and not modified as described above), and contracts that were entered into on or after December 1, 2003, must follow both parts 60–250 and 60–300.

(c) *Construction*—(1) *In general.* The Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) set out as an appendix to 29 CFR part 1630 issued pursuant to Title I may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any state or political subdivision that provides greater or equal protection for the rights of disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, or Armed Forces service medal protected veterans as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

§ 60–300.2 Definitions.

For the purpose of this part:

(a) *Act* means the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

(b) *Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.

(c) *Armed Forces service medal veteran* means any veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(d) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

(e) *Contract* means any Government contract or subcontract.

(f) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor holding a contract of $100,000 or more.

(g) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(h) *Director* means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

(i) *Disabled veteran* means:

(1) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or

(2) A person who was discharged or released from active duty because of a service-connected disability.

(j) [Reserved]

(k) *Employment service delivery system* means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.

(l) *Equal opportunity clause* means the contract provisions set forth in § 60–300.5, "Equal opportunity clause."

(m) *Essential functions*—(1) *In general.* The term essential functions means fundamental job duties of the employment position the disabled veteran holds or desires. The term essential functions does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including, but not limited to, the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(n) *Government* means the Government of the United States of America.

(o) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term *Government contract* does not include agreements in which the parties stand in the relationship of employer and employee, and Federally assisted contracts.

(1) *Construction,* as used in the definition of Government contract and subcontract of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(4) *Nonpersonal services,* as used in the definition of Government contract and subcontract of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Person,* as used in the definition of Government contract and subcontract of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(6) *Personal property,* as used in the definition of Government contract and subcontract of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(p) *Linkage Agreement* means an agreement describing the connection between contractors and appropriate recruitment and/or training sources. A linkage agreement is to be used by contractors as a source of potential applicants for the covered groups the contractor is interested in, as required by § 60–300.44(f). The contractor's representative that signs the linkage agreement should be the company official responsible for the contractor's affirmative action program and/or has hiring authority.

(q) *Prime contractor* means any person holding a contract of $100,000 or more, and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," includes any person who has held a contract subject to the Act.

(r) *Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of the Act; specifically, a veteran who may be classified as a "disabled veteran," "recently separated veteran," "active duty wartime or campaign badge veteran," and/or an "Armed Forces service medal veteran," as defined by this section.

(s) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(t) *Qualified disabled veteran* means a disabled veteran who has the ability to perform the essential functions of the employment position with or without reasonable accommodation.

(u) *Reasonable accommodation*—(1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant who is a disabled veteran to be considered for the position such applicant desires; [9] or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified disabled veteran to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee who is a disabled veteran to enjoy equal benefits and privileges of employment

[9] A contractor's duty to provide a reasonable accommodation with respect to applicants who are disabled veterans is not limited to those who ultimately demonstrate that they are qualified to perform the job in issue. Disabled veteran applicants must be provided a reasonable accommodation with respect to the application process if they are qualified with respect to that process (e.g., if they present themselves at the correct location and time to fill out an application).

as are enjoyed by the contractor's other similarly situated employees who are not disabled veterans.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by disabled veterans; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for disabled veterans.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified disabled veteran in need of the accommodation.[10] This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(v) *Recently separated veteran* means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(w) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(x) *Secretary* means the Secretary of Labor, United States Department of Labor, or his or her designee.

(y) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services (including construction) which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(z) *Subcontractor* means any person holding a subcontract of $100,000 or more and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," any person who has held a subcontract subject to the Act.

(aa) *TAP* means the Department of Defense's Transition Assistance Program, or any successor programs thereto. The TAP was designed to smooth the transition of military personnel and family members leaving active duty via employment workshops and individualized employment assistance and training.

(bb) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(cc) *United States,* as used in this part, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(dd) *Veteran* means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

§ 60–300.3 [Reserved]

§ 60–300.4 Coverage and waivers.

(a) *General*—(1) *Contracts and subcontracts of $100,000 or more.* Contracts and subcontracts of $100,000 or more are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $100,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order is $100,000 or more. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Employment activities within the United States.* This part applies only to employment activities within the United States and not to employment activities abroad. The term "employment activities within the United States" includes actual employment within the United States, and decisions of the contractor made within the United States pertaining to the contractor's applicants and employees who are within the United States, regarding employment opportunities abroad (such as recruiting and hiring within the United States for employment abroad, or transfer of persons employed in the United States to contractor establishments abroad).

(4) *Contracts with state or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate

[10] Contractors must engage in such an interactive process with a disabled veteran, whether or not a reasonable accommodation ultimately is identified that will make the person a qualified individual. Contractors must engage in the interactive process because, until they have done so, they may be unable to determine whether a reasonable accommodation exists that will result in the person being qualified.

in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: Where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the Act. When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

(3) *Facilities not connected with contracts.* The Director may waive the requirements of the equal opportunity clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

§ 60–300.5 Equal opportunity clause.

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

EQUAL OPPORTUNITY FOR SECTION 4212 PROTECTED VETERANS [11]

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veteran(s)") in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures.

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

iii. Rates of pay or any other form of compensation and changes in compensation.

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

v. Leaves of absence, sick leave, or any other leave.

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

viii. Activities sponsored by the contractor including social or recreational programs.

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in the manner and format required by the appropriate employment service delivery system to permit that system to provide priority referral of veterans protected by Section 4212 for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation only if the privately run job service or exchange provides the information to the appropriate employment service delivery system in that manner and format in which the employment service delivery system requires.

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be updated on an annual basis. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.

5. The contractor shall maintain records on an annual basis of the number of priority referrals of veterans protected by Section 4212 that it receives from each employment service delivery system, the total number of referrals it receives from each employment service delivery system, and the ratio of priority referrals to total referrals. The contractor shall maintain these records for a period of five (5) years.

6. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

[11] The definitions set forth in 41 CFR 60–300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

7. As used in this clause: i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

8. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

10. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

11. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 4212, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

12. The contractor will include the provisions of this clause in every subcontract or purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to Section 4212 so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

13. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their status as a protected veteran.

[End of Clause]

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as must be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It shall be necessary to include the equal opportunity clause verbatim in the contract.

(e) *Incorporation by operation of the Act.* By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Director and the Secretary in the performance of their responsibilities under the Act. Such cooperation shall include insuring that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the Act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the Act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in Sec. 60–300.66 as may be ordered by the Secretary or the Director.

Subpart B—Discrimination Prohibited

§ 60–300.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

§ 60–300.21 Prohibitions.

The term discrimination includes, but is not limited to, the acts described in this section and § 60–300.23.

(a) *Disparate treatment.* It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual because of that individual's status as a protected veteran.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way

that adversely affects his or her employment opportunities or status on the basis of that individual's status as a protected veteran. For example, the contractor may not segregate protected veterans as a whole, or any classification of protected veterans, into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements*—(1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee who is a protected veteran to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase "contractual or other arrangement or relationship" includes, but is not limited to, a relationship with: An employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of status as a protected veteran; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with a protected veteran.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known protected veteran status of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified disabled veteran, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an applicant or employee who is a qualified disabled veteran based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified disabled veteran is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified disabled veteran, unless the individual subsequently provides and/or pays for a reasonable accommodation as described in paragraph 4 of Appendix A of this part.

(g) *Qualification standards, tests and other selection criteria*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out individuals on the basis of their status as protected veterans unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude a disabled veteran if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude individuals on the basis of their status as protected veterans but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant who is a disabled veteran because the applicant's disability prevents him or her from performing marginal functions. When considering a protected veteran for an employment opportunity, the contractor may not rely on portions of such veteran's military record, including his or her discharge papers, which are not relevant to the qualification requirements of the opportunity in issue.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to 38 U.S.C. 4212 and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who is a disabled veteran with a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to protected veterans, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related and/or military-service-related pension or other disability-related and/or military-service-related benefit the applicant or employee receives from another source.

§ 60–300.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (*See* § 60–300.2(g) defining *direct threat.*).

§ 60–300.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is a disabled veteran or as to the nature or severity of such a veteran's disability.

(b) *Permitted medical examinations and inquiries*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and

before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of their status as a disabled veteran.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees who are disabled veterans as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor shall invite applicants to self-identify as being covered by the Act, as specified in § 60–300.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

§ 60–300.24 Drugs and alcohol.

(a) *Specific activities permitted.* The contractor: (1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of Sec. 60–300.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–300.23(b)(5) and 60–300.23(d)(2).

§ 60–300.25 Health insurance, life insurance and other benefit plans.

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The contractor shall not deny a qualified disabled veteran equal access to insurance or subject a qualified disabled veteran to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

Subpart C—Affirmative Action Program

§ 60–300.40 Applicability of the affirmative action program requirement.

(a) The requirements of this subpart apply to every Government contractor that has 50 or more employees and a contract of $100,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually by the official designated by the contractor pursuant to § 60–300.44(i).

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor also shall make the affirmative action program promptly available on-site upon OFCCP's request.

§ 60–300.41 Availability of affirmative action program.

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment. In the event that the contractor has employees who do not work at a physical establishment, the contractor shall inform such employees about the availability of the affirmative action program by other means.

§ 60–300.42 Invitation to self-identify.

(a) *Pre-offer.* The contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a protected veteran who may be covered by the Act. This invitation may be included in the application materials for the position, but in any circumstance shall be provided to applicants prior to making an offer of employment to a job applicant. Additionally, the contractor may invite disabled veterans to self-identify as such prior to making a job offer when:

(1) The invitation is made when the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or

(2) The invitation is made pursuant to a Federal, State, or local law requiring affirmative action for disabled veterans.

(b) *Post-offer.* At any time after the offer of employment but before the applicant begins his or her job duties, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran who may be covered by the Act.

(c) The invitations referenced in paragraphs (a) and (b) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitations also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitations shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. (An acceptable form for such an invitation is set forth in Appendix B of this part.)

(d) If an applicant identifies himself or herself as a disabled veteran in the post-offer self-identification detailed in paragraph (b) of this section, the contractor must inquire with the applicant whether an accommodation is necessary, and if so, must engage in an interactive process with applicant regarding reasonable accommodation. The contractor may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file in accordance with § 60–300.23(d) on persons who have self-identified as disabled veterans.

(e) The contractor shall keep all information on self-identification confidential. The contractor shall provide the information to OFCCP upon request. This information may be used only in accordance with this part.

(f) Nothing in this section relieves the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor to be protected veterans.

(g) Nothing in this section relieves the contractor from liability for discrimination under the Act.

§ 60–300.43 Affirmative action policy.

Under the affirmative action obligations imposed by the Act, contractors shall not discriminate against protected veterans, and shall take affirmative action to employ and advance in employment qualified protected veterans at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–300.20.

§ 60–300.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). The policy statement shall indicate the chief executive officer's support for the contractor's affirmative action program, provide for an audit and reporting system (*see* paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (*see* paragraph (i) of this section). Additionally, the policy shall state, among other things, that the contractor will: Recruit, hire, train and promote persons in all job titles, and ensure that all other personnel actions are administered, without regard to protected veteran status; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the affirmative action provisions of Section 4212 or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by Section 4212 or its implementing regulations in this part or any other Federal, state or local law requiring equal opportunity for protected veterans; or

(4) Exercising any other right protected by Section 4212 or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known protected veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that when a protected veteran is considered for employment opportunities, the contractor relies only on that portion of the individual's military record, including his or her discharge papers, that is relevant to the requirements of the opportunity in

issue. The contractor shall ensure that its personnel processes do not stereotype protected veterans in a manner which limits their access to all jobs for which they are qualified. The contractor shall review such processes on at least an annual basis and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. These procedures shall, at a minimum, include the following steps:

(1) For each applicant who is a protected veteran, the contractor shall be able to identify:

(i) each vacancy for which the applicant was considered; and

(ii) each training program for which the applicant was considered.

(2) For each employee who is a protected veteran, the contractor shall be able to identify:

(i) each promotion for which the protected veteran was considered; and

(ii) each training program for which the protected veteran was considered.

(3) In each case where an employee or applicant who is a protected veteran is rejected for employment, promotion, or training, the contractor shall prepare a statement of the reason as well as a description of the accommodations considered (for a rejected disabled veteran). The statement of the reason for rejection (if the reason is medically related), and the description of the accommodations considered, shall be treated as confidential medical records in accordance with § 60–300.23(d). These materials shall be available to the applicant or employee concerned upon request.

(4) Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible to place a disabled veteran on the job, the contractor shall make a record containing a description of the accommodation. The record shall be treated as a confidential medical record in accordance with § 60–300.23(d).

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the annual review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified disabled veterans, they are job-related for the position in question and are consistent with business necessity. The contractor shall document the methods used to complete the annual review, the results of the annual review, and any actions taken in response. These documents shall be retained as employment records subject to the recordkeeping requirements of § 60–300.80.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified disabled veterans, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor has the burden to demonstrate that it has complied with the requirements of this paragraph (c)(2).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (*See* § 60–300.2(g) defining direct threat.) Once the contractor believes that a direct threat exists, the contractor shall create a statement of reasons supporting its belief, addressing each the criteria for "direct threat" listed in § 60–300.2(f). This statement shall be treated as a confidential medical record in accordance with § 60–300.23, and shall be retained as an employment record subject to the recordkeeping requirements of § 60–300.80.

(d) *Reasonable accommodation to physical and mental limitations.* As is provided in § 60–300.21(f), as a matter of nondiscrimination the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled veteran unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee who is known to be a disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability; if the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed because of their status as a protected veteran.

(f) *External dissemination of policy, outreach and positive recruitment.*

(1) *Required outreach efforts.* The contractor shall undertake the outreach and positive recruitment activities listed below:

(i) The contractor shall establish linkage agreements enlisting the assistance and support of the Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment; and at least one of the following persons and organizations in recruiting and developing training opportunities for protected veterans to fulfill its commitment to provide meaningful employment opportunities to such veterans:

(A) The Department of Veterans Affairs Regional Office nearest the contractor's establishment;

(B) The veterans' counselors and coordinators (Vet-Reps) on college campuses;

(C) The service officers of the national veterans' groups active in the area of the contractor's establishment;

(D) Local veterans' groups and veterans' service centers near the contractor's establishment; and

(E) The Department of Defense Transition Assistance Program (TAP), or any subsequent program that, in whole or in part, might replace TAP.

(ii) The contractor shall also consult the Employer Resources section of the National Resource Directory (*http://www.nationalresourcedirectory.gov/employment/employer_resources*), or any future service that replaces or complements it, and tablish a linkage agreement with one or more of the veterans' service organizations listed on the directory, other than the agencies listed in (A) through (E) above, for such purposes as advice, technical assistance, and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(iii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including

subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) *Suggested outreach efforts.* The contractor should consider taking the actions listed below to fulfill its commitment to provide meaningful employment opportunities to protected veterans:

(i) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(ii) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are protected veterans.

(iii) An effort should be made to participate in work-study programs with Department of Veterans Affairs rehabilitation facilities which specialize in training or educating disabled veterans.

(iv) Protected veterans should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(v) The contractor should take any other positive steps it deems necessary to attract qualified protected veterans not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for any of the classifications of protected veterans.

(vi) The contractor, in making hiring decisions, shall consider applicants who are known protected veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(3) *Assessment of External Outreach and Recruitment Efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified protected veterans. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as to the effectiveness of its outreach efforts shall be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) *Recordkeeping Obligation.* The contractor shall document all linkage agreements and all other activities it undertakes to comply with the obligations of this paragraph, and retain these documents for a period of five (5) years.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified protected veterans. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual;

(ii) Inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified protected veterans. The contractor shall schedule meetings on an annual basis with all employees to discuss its affirmative action policies, explain contractor and individual employee responsibilities under these policies, and identify opportunities for advancement;

(iii) Conduct meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude;

(iv) Discuss the policy thoroughly in any employee orientation and management training programs;

(v) If the contractor is party to a collective bargaining agreement, it shall meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation;

(3) The contractor is encouraged to additionally implement and disseminate this policy internally as follows:

(i) If the contractor has a company newspaper, magazine, annual report, or other paper or electronic publication distributed to employees, it should publicize its affirmative action policy in these publications, and include in these publications, where appropriate, features on disabled veteran employees and articles on the accomplishments of protected veterans, with their consent.

(4) The contractor shall document those activities it undertakes to comply with the obligations of paragraph (g), and retain these documents as employment records subject to the recordkeeping requirements of § 60–300.80.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known protected veterans have had the opportunity to participate in all company sponsored educational, training, recreational and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records subject to the recordkeeping requirements of § 60–300.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity shall appear on

all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) *Training.* In addition to the training set forth in paragraph (g)(2)(ii) of this section, all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented. This training shall include, but not be limited to, the benefits of employing protected veterans, appropriate sensitivity toward protected veteran applicants and employees, and the legal responsibilities of the contractor and its agents regarding protected veterans generally and disabled veterans specifically, such as reasonable accommodation for qualified disabled veterans and the related rights and responsibilities of contractors and protected veterans. The contractor shall create contemporaneous records documenting the specific subject matter(s) covered in the training, who conducted the training, who received the training, and when the training took place. The contractor shall retain these documents, and any written or electronic materials used for the training required by this section, as employment records subject to the recordkeeping requirements of § 60–300.80.

(k) *Data Collection Analysis.* The contractor shall document and maintain the following computations or comparisons pertaining to applicants and hires on an annual basis:

(1) The number of priority referrals of veterans protected by this part that the contractor received from applicable employment service delivery system(s);

(2) The number of total referrals that the contractor received from applicable employment service delivery system(s);

(3) The ratio of priority referrals of veterans to total referrals (referral ratio);

(4) The number of applicants who self-identified as protected veterans pursuant to § 60–300.42(a), or who are otherwise known as protected veterans;

(5) The total number of job openings and total number of jobs filled;

(6) The ratio of jobs filled to job openings;

(7) The total number of applicants for all jobs;

(8) The ratio of protected veteran applicants to all applicants (applicant ratio);

(9) The number of protected veteran applicants hired;

(10) The total number of applicants hired; and

(11) The ratio of protected veterans hired to all hires (hiring ratio). The number of hires shall include all employees as defined in § 60–300.2.

§ 60–300.45 Contractor established benchmarks for hiring.

(a) *Purpose:* The purpose of establishing benchmarks is to create a quantifiable method by which the contractor can measure its progress toward achieving equal employment opportunity for protected veterans.

(b) Hiring benchmarks, expressed as the percentage of total hires that are protected veterans that the contractor will seek to hire, shall be established by the contractor on an annual basis. In establishing these benchmarks, contractors shall take into account the following information:

(1) The average percentage of veterans in the civilian labor force in the State(s) where the contractor is located over the preceding three years, as calculated by the Bureau of Labor Statistics and published on the OFCCP Web site;

(2) The number of veterans, over the previous four quarters, who were participants in the employment service delivery system in the State where the contractor is located, as tabulated by the Veterans' Employment and Training Service and published on the OFCCP Web site;

(3) The referral ratio, applicant ratio, and hiring ratio for the previous year, as set forth in § 60–300.44(k);

(4) The contractor's recent assessments of the effectiveness of its external outreach and recruitment efforts, as set forth in § 60–300.44(f)(3); and

(5) Any other factors, including but not limited to the nature of the contractor's job openings and/or its location, which would tend to affect the availability of qualified protected veterans.

(c) The contractor shall document the hiring benchmark it has established each year, detailing each of the factors that it considered in establishing the hiring benchmark and the relative significance of each of these factors. The contractor shall retain this document for a period of five (5) years.

Subpart D—General Enforcement and Complaint Procedures

§ 60–300.60 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the contractor is taking affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. OFCCP may extend the temporal scope of the desk audit beyond that set forth in the scheduling letter if OFCCP deems it necessary to carry out its investigation of potential violations of this Part. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 4212 and its regulations;

(3) *Compliance check.* A determination of whether the contractor

has maintained records consistent with § 60–300.80; OFCCP may request the documents be provided either on-site or off-site; or

(4) *Focused review.* A review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60–300.62.

(c) *Reporting Requirements.* During a compliance evaluation, OFCCP may verify whether the contractor has complied with applicable reporting requirements required under regulations promulgated by the Veterans' Employment and Training Service (VETS). If the contractor has not complied with any such reporting requirement, OFCCP will notify VETS.

(d) *Pre-award compliance evaluations.* Each agency will include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should total $10 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of $10 million or more will be subject to a compliance evaluation before the award of the contract unless OFCCP has conducted an evaluation and found them to be in compliance with Section 4212 within the preceding 24 months. The awarding agency will notify OFCCP and request appropriate action and findings in accordance with this subsection. Within 15 days of the notice OFCCP will inform the awarding agency of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the awarding agency within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a pre-award compliance evaluation, OFCCP will be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance will be presumed and the awarding agency is authorized to proceed with the award. .

§ 60–300.61 Complaint procedures.

(a) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally, or by an authorized representative, file a written complaint alleging a violation of the Act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Such complaint must be filed within 300 days of the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown. Complaints may be submitted to OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office. Complaints may also be submitted to the Veterans' Employment and Training Service of the Department of Labor directly, or through the Local Veterans' Employment Representative (LVER) at the local employment service office. Such parties will assist veterans in preparing complaints, promptly refer such complaints to OFCCP, and maintain a record of all complaints which they receive and forward. OFCCP shall inform the party forwarding the complaint of the progress and results of its complaint investigation. The state employment service delivery system shall cooperate with the Director in the investigation of any complaint.

(b) *Contents of complaints.*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) Documentation showing that the individual is a protected veteran. Such documentation must include a copy of the veteran's form DD–214, and, where applicable, a copy of the veteran's Benefits Award Letter, or similar Department of Veterans Affairs certification, updated within one year prior to the date the complaint is filed;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (b)(1) of this section. OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential, and OFCCP will protect the individual's confidentiality wherever that is possible given the facts and circumstances in the complaint.

(c) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(e) *Resolution of matters.* (1) If the complaint investigation finds no violation of the Act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60–300.65(a)(1), the complainant and contractor shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under Title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the Act or this part, OFCCP shall invite the contractor to participate in conciliation discussions pursuant to § 60–300.62.

§ 60–300.62 Conciliation agreements.

If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written

conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the time period for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

§ 60–300.63 Violation of conciliation agreements.

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceedings involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

§ 60–300.64 Show cause notices.

When the Director has reasonable cause to believe that the contractor has violated the Act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (*see* § 60–300.65).

§ 60–300.65 Enforcement proceedings.

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the Act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above in this sentence. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth in this section, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–300.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the Act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided,* That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights and Labor-Management, Regional Solicitors, and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to "Executive Order 11246" shall mean the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; references to "equal opportunity clause" shall mean the equal opportunity clause published at § 60–300.5; and references to "regulations" shall mean the regulations contained in this part.

§ 60–300.66 Sanctions and penalties.

(a) *Withholding progress payments.* With the prior approval of the Director, so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the Act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the Act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the Act or this part subject to reinstatement pursuant to § 60–300.68. Debarment may be imposed for an indefinite period, or may be imposed for a fixed period of not less than six months but no more than three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be afforded to a contractor before the imposition of any sanction or penalty.

§ 60–300.67 Notification of agencies.

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

§ 60–300.68 Reinstatement of ineligible contractors.

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the Act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the Act or this part. Before reaching a decision, the Director may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The

Director shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and Labor-Management and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

§ 60–300.69 Intimidation and interference.

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Act or any other Federal, state or local law requiring equal opportunity for protected veterans;

(3) Opposing any act or practice made unlawful by the Act or this part or any other Federal, state or local law requiring equal opportunity for protected veterans, or

(4) Exercising any other right protected by the Act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Director against any contractor who violates this obligation.

§ 60–300.70 Disputed matters related to compliance with the Act.

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the Act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

Subpart E—Ancillary Matters

§ 60–300.80 Recordkeeping.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period will be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and resumes; tests and test results; interview notes; and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term *personnel records relevant to the complaint, compliance evaluation or action* would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. Records required by §§ 60–250.44(f)(4), 60–250.44(k), 60–250.45(c), and Paragraph 5 of the equal opportunity clause in § 250.5(a) shall be maintained by all contractors for a period of five years from the date of the making of the record.

(b) *Failure to preserve records.* Failure to preserve complete and accurate records as required by this part constitutes noncompliance with the contractor's obligations under the Act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after the date that the Office of Management and Budget has cleared the requirements.

§ 60–300.81 Access to records.

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material OFCCP deems relevant to the matter under investigation and pertinent to compliance with the Act or this part. Contractors must also provide OFCCP access to these materials, including electronic records, off-site for purposes of conducting compliance evaluations and complaint investigations. Upon request, the contractor must provide OFCCP information about all format(s), including specific electronic formats, in which its records and other information are available. The contractor must provide records and other information in any available format requested by OFCCP. Information obtained in this manner shall be used only in connection with the administration of the Act and in furtherance of the purposes of the Act.

§ 60–300.82 Labor organizations and recruiting and training agencies.

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, the Department of Veterans Affairs, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the Act.

§ 60–300.83 Rulings and interpretations.

Rulings under or interpretations of the Act and this part shall be made by the Director.

§ 60–300.84 Responsibilities of appropriate employment service delivery system.

By statute, appropriate employment service delivery systems are required to refer qualified protected veterans to fill employment openings listed by contractors with such appropriate employment delivery systems pursuant to the mandatory job listing requirements of the equal opportunity clause and are required to give priority to protected veterans in making such referrals. The employment service delivery systems shall provide OFCCP, upon request, information pertinent to whether the contractor is in compliance with the mandatory job listing requirements of the equal opportunity clause.

Appendix A to Part 60–300—Guidelines on a Contractor's Duty To Provide Reasonable Accommodation

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. *See* § 60–300.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under Section 4212, like reasonable accommodation required under Section 503 and the ADA, is a part of the nondiscrimination obligation. *See* EEOC appendix cited in this paragraph. Affirmative action is unique to Section 4212 and Section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor shall make an inquiry of a disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–300.2(t), a disabled veteran is qualified if he or she has the ability to perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the disabled veteran is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be disabled veterans. As stated in § 60–300.42(a) (*see* also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are a disabled veteran who may be covered by the Act and wish to benefit under the contractor's affirmative action program. Section 60–300.42(d) further provides that the contractor must seek the advice of disabled veterans who "self-identify" in this way as to reasonable accommodation. Moreover, § 60–300.44(d) provides that if an employee who is a known disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees who are disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, *e.g.,* the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the disabled veteran must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for "reasonable accommodation" in § 60–300.2(u) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor must consult with the disabled veteran in deciding on the reasonable accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice), 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1–800–526–7234 or 1–800–232–9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in § 60–300.2(u) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" must be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled veterans. It should also be noted that the contractor is not required to promote a disabled veteran as an accommodation.

11. With respect to the application process, reasonable accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

Appendix B to Part 60–300—Sample Invitation to Self-Identify

[Sample Invitation to Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4212 (Section 4212), as amended, which requires Government contractors to take affirmative action to employ and advance in employment: (1) Qualified disabled veterans; (2) recently separated veterans; (3) active duty wartime or campaign badge veterans; and (4) Armed Forces service medal veterans. These classifications are defined as follows:

- A "qualified disabled veteran" means someone who has the ability to perform the essential functions of the employment position with or without reasonable accommodation, and also is one of the following:
- a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- a person who was discharged or released from active duty because of a service-connected disability
- A "recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.
- An "active duty wartime or campaign badge veteran" means a veteran who served in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
- An "Armed forces service medal veteran" means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

2. [THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING THE "PRE–OFFER" INVITATION TO PROTECTED VETERANS REQUIRED BY 41 CFR 60–300.42(a). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERANS SET FORTH IN PARAGRAPH 1 MUST ACCOMPANY THIS SELF–IDENTIFICATION REQUEST.] If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below. As a Government contractor subject to Section 4212, we request this information in order to measure the effectiveness of the outreach and positive recruitment efforts we undertake pursuant to Section 4212.

[ ] I IDENTIFY AS ONE OR MORE OF THE CLASSIFICATIONS OF PROTECTED VETERAN LISTED ABOVE
[ ] I AM NOT A PROTECTED VETERAN
[ ] I CHOOSE NOT TO PROVIDE THIS INFORMATION

[THE FOLLOWING TEXT SHOULD BE USED WHEN EXTENDING THE "POST–OFFER" INVITATION TO PROTECTED VETERANS REQUIRED BY 41 CFR 60–300.42(b). THE DEFINITIONS OF THE SEPARATE CLASSIFICATIONS OF PROTECTED VETERANS SET FORTH IN PARAGRAPH 1 MUST ACCOMPANY THIS SELF–IDENTIFICATION REQUEST.] As a Government contractor subject to Section 4212, we are required to submit a report (VETS–100A) to the United States Department of Labor each year identifying the number of our employees belonging to each "protected veteran" category. If you

believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below.

I BELONG TO THE FOLLOWING CLASSIFICATIONS OF PROTECTED VETERANS (CHOOSE ALL THAT APPLY):

[ ] QUALIFIED DISABLED VETERAN
[ ] RECENTLY SEPARATED VETERAN
[ ] ACTIVE WARTIME OR CAMPAIGN BADGE VETERAN
[ ] ARMED FORCES SERVICE MEDAL VETERAN

[ ] I am a protected veteran, but I choose not to self-identify the classifications to which I belong.
[ ] I am NOT a protected veteran.
[ ] I choose not to provide this information.

If you are a disabled veteran it would assist us if you tell us whether there are accommodations we could make that would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, changes in the way the job is customarily performed, provision of personal assistance services or other accommodations. This information will assist us in making reasonable accommodations for your disability.

3. You may inform us of your desire to benefit under the program at this time and/or at any time in the future.

4. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information provided will be used only in ways that are not inconsistent with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

5. The information you submit will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if you have a condition that might require emergency treatment; and (iii) Government officials engaged in enforcing laws administered by the Office of Federal Contract Compliance Programs, or enforcing the Americans with Disabilities Act, may be informed.

6. [The contractor should here insert a brief provision summarizing the relevant portion of its affirmative action program.]

[FR Doc. 2011–8693 Filed 4–25–11; 8:45 am]

BILLING CODE 4510–45–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 80 April 26, 2011

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 10 and 21
General Provisions; Revised List of Migratory Birds; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10 and 21

[Docket No. FWS–R9–MB–2010–0088; 91200–1231–9BPP]

RIN 1018–AX48

General Provisions; Revised List of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise the List of Migratory Birds by both adding and removing species. Reasons for the changes to the list include adding species based on new taxonomy and new evidence of occurrence in the United States or U.S. territories, removing species no longer known to occur within the United States, and changing names to conform to accepted use. The net increase of 19 species (23 added and 4 removed) brings the total number of species protected by the Migratory Bird Treaty Act (MBTA) to 1,026. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for public notification and regulatory purposes.

DATES: To ensure consideration of your comments, they must be received or postmarked on or before July 25, 2011.

ADDRESSES: You may submit comments by either one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2010–0088.
- *U.S. Mail or hand delivery:* Public Comments Processing, *Attn:* FWS–R9–MB–2010–0088; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. *See* the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Terry Doyle, Wildlife Biologist, Division of Migratory Bird Management, 703–358–1799.

SUPPLEMENTARY INFORMATION:

Background

What statutory authority does the service have for this rulemaking?

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712), the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 742l), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j). The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) *Canada:* Convention between the United States and Great Britain [on behalf of Canada] for the Protection of Migratory Birds, August 16, 1916, 39 Stat. 1702 (T.S. No. 628);

(2) *Mexico:* Convention between the United States and Mexico for the Protection of Migratory Birds and Game Mammals, February 7, 1936, 50 Stat. 1311 (T.S. No. 912);

(3) *Japan:* Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, 25 U.S.T. 3329 (T.I.A.S. No. 7990); and

(4) *Russia:* Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment (Russia), November 19, 1976, 29 U.S.T. 4647 (T.I.A.S. No. 9073).

What is the purpose of this rulemaking?

Our purpose is to inform the public of the species protected by the MBTA and its implementing regulations. These regulations are found in Title 50, Code of Federal Regulations (CFR), Parts 10, 20, and 21. We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

Why is this amendment of the list of migratory birds necessary?

The amendment is needed to: (1) Add five species previously overlooked from a family protected under the MBTA; (2) correct the spelling of five species on the alphabetized list; (3) correct the spelling of two species on the taxonomic list; (4) add 11 species based on new distributional records documenting their natural occurrence in the United States since April 2007; (5) add one species from a family now protected under the MBTA as a result of taxonomic changes; (6) add six species newly recognized as a result of recent taxonomic changes; (7) remove four species not known to occur within the boundaries of the United States or its territories as a result of recent taxonomic changes; (8) change the common (English) names of nine species to conform with accepted use; and (9) change the scientific names of 36 species to conform to accepted use.

The List of Migratory Birds (50 CFR 10.13) was last revised on March 1, 2010 (75 FR 9282). These amendments were necessitated by three published supplements to the 7th (1998) edition of the American Ornithologists' Union's (AOU's) *Check-list of North American Birds* (AOU 2008, AOU 2009, and AOU 2010).

In addition, we propose to correct the legal authorities citations at 50 CFR 10.13(a).

We also would make a small change to a definition in 50 CFR 21.3. We propose to update the definition of "raptor" to also include the order Accipitriformes to correspond to the proposed changes in the List of Migratory Birds.

What scientific authorities are used to amend the list of migratory birds?

Although bird names (common and scientific) are relatively stable, staying current with standardized use is necessary to avoid confusion in communications. In making our determinations, we primarily relied on the American Ornithologists' Union's *Check-list of North American Birds* (AOU 1998), as amended (AOU 1999, 2000, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010), on matters of taxonomy, nomenclature, and the sequence of species and other higher taxonomic categories (orders, families, subfamilies) for species that occur in North America. The AOU Checklist contains all bird species that have occurred in North America from the Arctic through Panama, including the West Indies and the Hawaiian Islands, and includes distributional information for each species, which specifies whether the species is known to occur in the United States. For the 39 species that occur outside the geographic area covered by the *Check-list* (28 that occur in the Pacific island territories and 11 listed in the Japanese and/or Russian conventions that have not occurred in the AOU area), we relied primarily on Clements (2007). Although we primarily rely on the above checklists, when informed taxonomic opinion is inconsistent or controversial, we evaluate available published and unpublished information and come to

our own conclusion regarding the validity of taxa.

What criteria are used to identify individual species protected by the MBTA?

A species qualifies for protection under the MBTA by meeting one or more of the following four criteria:

(1) It is covered by the Canadian Convention of 1916, as amended in 1996, by virtue of meeting the following three criteria: (a) It belongs to a family or group of species named in the Canadian Convention, as amended; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the AOU or other competent scientific authorities.

(2) It is covered by the Mexican Convention of 1936, as amended in 1972, by virtue of meeting the following three criteria: (a) It belongs to a family or group of species named in the Mexican Convention, as amended; (b) specimens, photographs, videotape recordings, or audiotape recordings provide convincing evidence of natural occurrence in the United States or its territories; and (c) the documentation of such records has been recognized by the AOU or other competent scientific authorities.

(3) It is listed in the annex to the Japanese Convention of 1972, as amended.

(4) It is listed in the appendix to the Russian Convention of 1976.

In accordance with the Migratory Bird Treaty Reform Act of 2004 (MBTRA) (Pub. L. 108–447, 118 Stat. 2809, 3071–72), we include all species native to the United States or its territories, which are those that occur as a result of natural biological or ecological processes (see 70 FR 12710, March 15, 2005). We do not include nonnative species whose occurrences in the United States are solely the result of intentional or unintentional human-assisted introduction(s).

How do the proposed changes affect the list of migratory birds?

Several taxonomic changes were made at the Order and Family level by the AOU since publication of the last list. These changes affect the inclusion and taxonomic order of species on this list. Specifically, the Orders Phaethontiformes and Suliformes were split from the Pelecaniformes. Phaethontiformes now includes the Family Phaethontidae (tropicbirds); Suliformes now includes the Families Fregatidae (frigatebirds), Sulidae (boobys), Phalacrocoracidae (cormorants), and Anhingidae (anhingas). In addition, the Order Accipitriformes was split from the Falconiformes and now include the Families Cathartidae (vultures), Pandionidae (Osprey), and Accipitridae (hawks and eagles). At the Family level, the Ardeidae (herons and egrets) and Threskiornithidae (ibis and spoonbills) were moved from the Ciconiiformes to the Pelecaniformes Order, the Pandionidae (Osprey) were separated from the Accipitridae (hawks and eagles), and the Stercorariidae (jaegers and skuas) were separated from the Laridae (gulls, terns, and skimmers). The Polioptilidae (gnatcatchers), Phylloscopidae (*Phylloscopus* warblers), Acrocephalidae (*Acrocephalus* warblers), and Megaluridae (*Locustella* warblers) were separated from the Sylviidae, and the Calcariidae (longspurs and snow buntings) were separated from the Emberizidae (buntings and sparrows). The euphonias were put into their own Subfamily (Euphoniinae) and moved from the Thraupidae to the Fringillidae Family. All species within these newly created families continue to be protected under the MBTA. In addition, the Wrentit was moved from the Timaliidae (babblers) to the Sylviidae and is now in a family protected by the MBTA.

The amendments (23 additions, 4 removals, and 51 name changes) affect a grand total of 78 species and result in a net addition of 19 species to the List of Migratory Birds, increasing the species total from 1,007 to 1,026. Of the 23 species that we add to the list, 6 were previously covered under the MBTA as subspecies of listed species. These amendments can be logically arranged in the following 9 categories:

(1) Add five species from the family Muscicapidae, a family specifically listed in the 1996 protocol amending the 1916 convention with Canada. The omission of these species on the previous list was an oversight. All are considered accidental or casual in Alaska. The species and relevant AOU publication(s) are:

Mugimaki Flycatcher, *Ficedula mugimaki* (AOU 1987, 1997, 1998);

Taiga Flycatcher, *Ficedula albicilla* (AOU 1982, 1983, 1998, 2006);

Dark-sided Flycatcher, *Muscicapa sibirica* (AOU 1982, 1983, 1998, 2004);

Asian Brown Flycatcher, *Muscicapa dauurica* (AOU 1987, 1989, 1998); and

Spotted Flycatcher, *Muscicapa striata* (AOU 2004).

(2) Correct the spelling of five scientific names on the alphabetized list:

Nesofregata fuliginosa (Polynesian Storm-Petrel), becomes *Nesofregetta fuliginosa;*

Thalleseus maximus (Royal Tern), becomes *Thalasseus maximus;*

Thalleseus sandvicensis (Sandwich Tern), becomes *Thalasseus sandvicensis;*

Phylloscopus siilatrix (Wood Warbler), becomes *Phylloscopus sibilatrix;* and

Locustella lanceoloata (Lanceolated Warbler), becomes *Locustella lanceolata.*

(3) Correct the spelling of two scientific names on the taxonomic list:

Nesofregetta fuiginosa (Polynesian Storm-Petrel), becomes *Nesofregetta fuliginosa;* and

Tiaris olivacea (Yellow-faced Grassquit), becomes *Tiaris olivaceus.*

(4) Add 11 species based on review and acceptance by AOU (since April 2007) of new distributional records documenting their occurrence in the United States, Puerto Rico, or the U.S. Virgin Islands. These species belong to families covered by the Canadian and/or Mexican Conventions, and all are considered to be of accidental or casual occurrence. For each species, we list the State in which it has been recorded plus the relevant publication:

Parkinson's Petrel, *Procellaria parkinsoni*—California (AOU 2008);

Swinhoe's Storm-Petrel, *Oceanodroma monorhis*—North Carolina (AOU 2010);

Swallow-tailed Gull, *Creagrus furcatus*—California (AOU 2008);

Brown Hawk-Owl, *Ninox scutulata*—Alaska (AOU 2009);

White-crested Elaenia, *Elaenia albiceps*—Texas (AOU 2010);

Crowned Slaty Flycatcher, *Empidonomus aurantioatrocristatus*—Louisiana (AOU 2010);

Sinaloa Wren, *Thryothorus sinaloa*—Arizona (AOU 2010);

Pallas's Leaf-Warbler, *Phylloscopus proregulus*—Alaska (AOU 2008);

Sedge Warbler, *Acrocephalus schoenobaenus*—Alaska (AOU 2009);

Rufous-tailed Robin, *Luscinia sibilans*—Alaska (AOU 2010); and

Yellow-browed Bunting, *Emberiza chrysophrys*—Alaska (AOU 2009).

(5) Add one species because of recent taxonomic changes transferring a species in a family formerly not protected by the MBTA (Timaliidae) into a family protected under the MBTA (Sylviidae). We reference the AOU publication supporting the change:

Wrentit, *Chamaea fasciata* (AOU 2010).

(6) Add six species because of recent taxonomic changes in which taxa formerly treated as subspecies have

been determined to be distinct species. Given that each of these species was formerly treated as subspecies of a listed species, these additions will not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the AOU publication supporting the change:

Eastern Spot-billed Duck, *Anas zonorhyncha*—formerly considered a subspecies of *Anas poecilorhyncha,* Spot-billed Duck (AOU 2008);

Black Scoter, *Melanitta americana*—formerly treated as a subspecies of *Melanitta nigra,* Common [Black] Scoter (AOU 2009);

Mexican Whip-poor-will, *Caprimulgus arizonae*— formerly treated as a subspecies of *Caprimulgus vociferus,* Whip-poor-will (AOU 2010);

Pacific Wren, *Troglodytes pacificus*—formerly treated as a subspecies of *Troglodytes troglodytes,* Eurasian [Winter] Wren (AOU 2010);

Winter Wren, *Troglodytes hiemalis*—formerly treated as a subspecies of *Troglodytes troglodytes,* Eurasian [Winter] Wren (AOU 2010); and

Puerto Rican Oriole, *Icterus portoricensis*— formerly treated as a subspecies of *Icterus dominicensis,* Hispaniolan [Greater Antillean] Oriole (AOU 2010).

(7) Remove four species based on revised taxonomic treatments and distributional evidence confirming that their known geographic ranges lie entirely outside the political boundaries of the United States and its territories. In each case, we reference the AOU publication supporting these changes:

Spot-billed Duck, *Anas poecilorhyncha* (AOU 2008);

Common [Black] Scoter, *Melanitta nigra* (AOU 2009);

Eurasian [Winter] Wren, *Troglodytes troglodytes* (AOU 2010); and

Hispaniolan [Greater Antillean] Oriole, *Icterus dominicensis* (AOU 2010).

(8) Revise the common (English) names of nine species to conform to the most recent nomenclatural treatment. These revisions do not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the published source for the name change:

Greater Flamingo, *Phoenicopterus ruber,* becomes American Flamingo (AOU 2008);

Greater Shearwater, *Puffinus gravis,* becomes Great Shearwater (AOU 2010);

Whip-poor-will, *Caprimulgus vociferus,* becomes Eastern Whip-poor-will (AOU 2010);

Green Violet-ear, *Colibri thalassinus,* becomes Green Violetear (AOU 2008);

Blue Rock Thrush, *Monticola solitarius,* becomes Blue Rock-Thrush (Clements 2007);

Clay-colored Robin, *Turdus grayi,* becomes Clay-colored Thrush (AOU 2008);

White-throated Robin, *Turdus assimilis,* becomes White-throated Thrush (AOU 2008);

Nelson's Sharp-tailed Sparrow, *Ammodramus nelsoni,* becomes Nelson's Sparrow (AOU 2009); and

Saltmarsh Sharp-tailed Sparrow, *Ammodramus caudacutus,* becomes Saltmarsh Sparrow (AOU 2009).

(9) Revise the scientific names of 36 species to conform to the most recent nomenclatural treatment. These revisions do not change the protective status of any of these taxa, only the names by which they are known. In each case, we reference the AOU publication documenting the name change:

Larus philadelphia (Bonaparte's Gull) becomes *Chroicocephalus philadelphia* (AOU 2008);

Larus cirrocephalus (Gray-hooded Gull) becomes *Chroicocephalus cirrocephalus* (AOU 2008);

Larus ridibundus (Black-headed Gull) becomes *Chroicocephalus ridibundus* (AOU 2008);

Larus minutus (Little Gull) becomes *Hydrocoloeus minutus* (AOU 2008);

Larus atricilla (Laughing Gull) becomes *Leucophaeus atricilla* (AOU 2008);

Larus pipixcan (Frankin's Gull) becomes *Leucophaeus pipixcan* (AOU 2008);

Cyanocorax morio (Brown Jay) becomes *Psilorhinus morio* (AOU 2010);

Poecile hudsonica (Boreal Chickadee) becomes *Poecile hudsonicus* (AOU 2009);

Poecile cincta (Gray-headed Chickadee) becomes *Poecile cinctus* (AOU 2009);

Calcarius mccownii (McCown's Longspur) becomes *Rhynchophanes mccownii* (AOU 2010);

Vermivora pinus (Blue-winged Warbler) becomes *Vermivora cyanoptera* (AOU 2010);

Vermivora peregrina (Tennessee Warbler) becomes *Oreothlypis peregrina* (AOU 2010);

Vermivora celata (Orange-crowned Warbler) becomes *Oreothlypis celata* (AOU 2010);

Vermivora ruficapilla (Nashville Warbler) becomes *Oreothlypis ruficapilla* (AOU 2010);

Vermivora virginiae (Virginia's Warbler) becomes *Oreothlypis virginiae* (AOU 2010);

Vermivora crissalis (Colima Warbler) becomes *Oreothlypis crissalis* (AOU 2010);

Vermivora luciae (Lucy's Warbler) becomes *Oreothlypis luciae* (AOU 2010);

Parula superciliosa (Crescent-chested Warbler) becomes *Oreothlypis superciliosa* (AOU 2010);

Seiurus noveboracensis (Northern Waterthrush) becomes *Parkesia noveboracensis* (AOU 2010);

Seiurus motacilla (Louisiana Waterthrush) becomes *Parkesia motacilla* (AOU 2010);

Pipilo fuscus (Canyon Towhee) becomes *Melozone fusca* (AOU 2010);

Pipilo crissalis (California Towhee) becomes *Melozone crissalis* (AOU 2010);

Pipilo aberti (Abert's Towhee) becomes *Melozone aberti* (AOU 2010);

Aimophila carpalis (Rufous-winged Sparrow) becomes *Peucaea carpalis* (AOU 2010);

Aimophila botterii (Botteri's Sparrow) becomes *Peucaea botterii* (AOU 2010);

Aimophila cassinii (Cassin's Sparrow) becomes *Peucaea cassinii* (AOU 2010);

Aimophila aestivalis (Bachman's Sparrow) becomes *Peucaea aestivalis* (AOU 2010);

Aimophila quinquestriata (Five-striped Sparrow) becomes *Amphispiza quinquestriata* (AOU 2010);

Carduelis flammea (Common Redpoll) becomes *Acanthis flammea* (AOU 2009);

Carduelis hornemanni (Hoary Redpoll) becomes *Acanthis hornemanni* (AOU 2009);

Carduelis spinus (Eurasian Siskin) becomes *Spinus spinus* (AOU 2009);

Carduelis pinus (Pine Siskin) becomes *Spinus pinus* (AOU 2009);

Carduelis psaltria (Lesser Goldfinch) becomes *Spinus psaltria* (AOU 2009);

Carduelis lawrencei (Lawrence's Goldfinch) becomes *Spinus lawrencei* (AOU 2009);

Carduelis tristis (American Goldfinch) becomes *Spinus tristis* (AOU 2009); and

Carduelis sinica (Oriental Greenfinch) becomes *Chloris sinica* (AOU 2009).

For ease of comparison, changes are summarized in the following table (numbers reference the categories treated above). Species whose names have been revised (categories 2, 8, and 9) appear in both the left-hand column (old name removed) and right-hand column (new name added), as are species that have been added based on taxonomic splits (category 6) of extralimital species that have been removed (category 7).

Removed (taxonomically)	Added (taxonomically)
Spot-billed Duck, *Anas poecilorhyncha* (7)	Eastern Spot-billed Duck, *Anas zonorhyncha* (6).
Common [Black] Scoter, *Melanitta nigra* (7)	Black Scoter, *Melanitta americana* (6).
Greater Flamingo, *Phoenicopterus ruber* (8)	American Flamingo, *Phoenicopterus ruber* (8).
	Parkinson's Petrel, *Procellaria parkinsoni* (4).
Greater Shearwater, *Puffinus gravis* (8)	Great Shearwater, *Puffinus gravis* (8).
Polynesian Storm-Petrel, *Nesofregata fuliginosa* (2)	Polynesian Storm-Petrel, *Nesofregetta fuliginosa* (2).
Polynesian Storm-Petrel, *Nesofregetta fuiginosa* (3)	Polynesian Storm-Petrel, *Nesofregetta fuliginosa* (3).
	Swinhoe's Storm-Petrel, *Oceanodroma monorhis* (4).
	Swallow-tailed Gull, *Creagrus furcatus* (4).
Bonaparte's Gull, *Larus philadelphia* (9)	Bonaparte's Gull, *Chroicocephalus philadelphia* (9).
Gray-hooded Gull, *Larus cirrocephalus* (9)	Gray-hooded Gull, *Chroicocephalus cirrocephalus* (9).
Black-headed Gull, *Larus ridibundus* (9)	Black-headed Gull, *Chroicocephalus ridibundus* (9).
Little Gull, *Larus minutus* (9)	Little Gull, *Hydrocoloeus minutus* (9).
Laughing Gull, *Larus atricilla* (9)	Laughing Gull, *Leucophaeus atricilla* (9).
Frankin's Gull, *Larus pipixcan* (9)	Frankin's Gull, *Leucophaeus pipixcan* (9).
Royal Tern, *Thalleseus maximus* (2)	Royal Tern, *Thalasseus maximus* (2).
Sandwich Tern, *Thalleseus sandvicensis* (2)	Sandwich Tern, *Thalasseus sandvicensis* (2).
	Brown Hawk-Owl, *Ninox scutulata* (4).
Whip-poor-will, *Caprimulgus vociferus* (8)	Eastern Whip-poor-will, *Caprimulgus vociferus* (8).
	Mexican Whip-poor-will, *Caprimulgus arizonae* (6).
Green Violet-ear, *Colibri thalassinus* (8)	Green Violetear, *Colibri thalassinus* (8).
	White-crested Elaenia, *Elaenia albiceps* (4).
	Crowned Slaty Flycatcher, *Empidonomus aurantioatrocristatus* (4).
Brown Jay, *Cyanocorax morio* (9)	Brown Jay, *Psilorhinus morio* (9).
Boreal Chickadee, *Poecile hudsonica* (9)	Boreal Chickadee, *Poecile hudsonicus* (9).
Gray-headed Chickadee, *Poecile cincta* (9)	Gray-headed Chickadee, *Poecile cinctus* (9).
	Sinaloa Wren, *Thryothorus sinaloa* (4).
	Pacific Wren, *Troglodytes pacificus* (6).
Eurasian [Winter] Wren, *Troglodytes troglodytes* (7)	Winter Wren, *Troglodytes hiemalis* (6).
Wood Warbler, *Phylloscopus siilatrix* (2)	Wood Warbler, *Phylloscopus sibilatrix* (2).
	Pallas's Leaf-Warbler, *Phylloscopus proregulus* (4).
Lanceolated Warbler, *Locustella lanceoloata* (2)	Lanceolated Warbler, *Locustella lanceolata* (2).
	Wrentit, *Chamaea fasciata* (5).
	Sedge Warbler, *Acrocephalus schoenobaenus* (4).
	Mugimaki Flycatcher, *Ficedula mugimaki* (1).
	Taiga Flycatcher, *Ficedula albicilla* (1).
	Dark-sided Flycatcher, *Muscicapa sibirica* (1).
	Asian Brown Flyctcher, *Muscicapa dauurica* (1).
	Spotted Flycatcher, *Muscicapa striata* (1).
Blue Rock Thrush, *Monticola solitarius* (8)	Blue Rock-Thrush, *Monticola solitarius* (8).
	Rufous-tailed Robin, *Luscinia sibilans* (4).
Clay-colored Robin, *Turdus grayi* (8)	Clay-colored Thrush, *Turdus grayi* (8).
White-throated Robin, *Turdus assimilis* (8)	White-throated Thrush, *Turdus assimilis* (8).
McCown's Longspur, *Calcarius mccownii* (9)	McCown's Longspur, *Rhynchophanes mccownii* (9).
Blue-winged Warbler, *Vermivora pinus* (9)	Blue-winged Warbler, *Vermivora cyanoptera* (9).
Tennessee Warbler, *Vermivora peregrina* (9)	Tennessee Warbler, *Oreothlypis peregrina* (9).
Orange-crowned Warbler, *Vermivora celata* (9)	Orange-crowned Warbler, *Oreothlypis celata* (9).
Nashville Warbler, *Vermivora ruficapilla* (9)	Nashville Warbler, *Oreothlypis ruficapilla* (9).
Virginia's Warbler, *Vermivora virginiae* (9)	Virginia's Warbler, *Oreothlypis virginiae* (9).
Colima Warbler, *Vermivora crissalis* (9)	Colima Warbler, *Oreothlypis crissalis* (9).
Lucy's Warbler, *Vermivora luciae* (9)	Lucy's Warbler, *Oreothlypis luciae* (9).
Crescent-chested Warbler, *Parula superciliosa* (9)	Crescent-chested Warbler, *Oreothlypis superciliosa* (9).
Northern Waterthrush, *Seiurus noveboracensis* (9)	Northern Waterthrush, *Parkesia noveboracensis* (9).
Louisiana Waterthrush, *Seiurus motacilla* (9)	Louisiana Waterthrush, *Parkesia motacilla* (9).
Yellow-faced Grassquit, *Tiaris olivacea* (3)	Yellow-faced Grassquit, *Tiaris olivaceus* (3).
Canyon Towhee, *Pipilo fuscus* (9)	Canyon Towhee, *Melozone fusca* (9).
California Towhee, *Pipilo crissalis* (9)	California Towhee, *Melozone crissalis* (9).
Abert's Towhee, *Pipilo aberti* (9)	Abert's Towhee, *Melozone aberti* (9).
Rufous-winged Sparrow, *Aimophila carpalis* (9)	Rufous-winged Sparrow, *Peucaea carpalis* (9).
Botteri's Sparrow, *Aimophila botterii* (9)	Botteri's Sparrow, *Peucaea botterii* (9).
Cassin's Sparrow, *Aimophila cassinii* (9)	Cassin's Sparrow, *Peucaea cassinii* (9).
Bachman's Sparrow, *Aimophila aestivalis* (9)	Bachman's Sparrow, *Peucaea aestivalis* (9).
Five-striped Sparrow, *Aimophila quinquestriata* (9)	Five-striped Sparrow, *Amphispiza quinquestriata* (9).
Nelson's Sharp-tailed Sparrow, *Ammodramus nelsoni* (8)	Nelson's Sparrow, *Ammodramus nelsoni* (8).
Saltmarsh Sharp-tailed Sparrow, *Ammodramus caudacutus* (8)	Saltmarsh Sparrow, *Ammodramus caudacutus* (8).
	Yellow-browed Bunting, *Emberiza chrysophrys* (4).
Hispaniolan [Greater Antillean] Oriole, *Icterus dominicensis* (7)	Puerto Rican Oriole, *Icterus portoricensis* (6).
Common Redpoll, *Carduelis flammea* (9)	Common Redpoll, *Acanthis flammea* (9).
Hoary Redpoll, *Carduelis hornemanni* (9)	Hoary Redpoll, *Acanthis hornemanni* (9).
Eurasian Siskin, *Carduelis spinus* (9)	Eurasian Siskin, *Spinus spinus* (9).
Pine Siskin, *Carduelis pinus* (9)	Pine Siskin, *Spinus pinus* (9).
Lesser Goldfinch, *Carduelis psaltria* (9)	Lesser Goldfinch, *Spinus psaltria* (9).
Lawrence's Goldfinch, *Carduelis lawrencei* (9)	Lawrence's Goldfinch, *Spinus lawrencei* (9).
American Goldfinch, *Carduelis tristis* (9)	American Goldfinch, *Spinus tristis* (9).

Removed (taxonomically)	Added (taxonomically)
Oriental Greenfinch, *Carduelis sinica* (9)	Oriental Greenfinch, *Chloris sinica* (9).

How is the list of migratory birds organized?

The species are listed in two formats to suit the needs of different segments of the public: alphabetically in 50 CFR 10.13(c)(1) and taxonomically in 50 CFR 10.13(c)(2). In the alphabetical listing, species are listed by common (English) group names, with the scientific name of each species following the English group name. This format, similar to that used in modern telephone directories, is most useful to members of the lay public. In the taxonomic listing, species are listed in phylogenetic sequence by scientific name, with the English name following the scientific name. To help clarify species relationships, we also list the higher-level taxonomic categories of Order, Family, and Subfamily. This format follows the sequence adopted by the AOU (1998, 2010) and is most useful to ornithologists and other scientists.

What species are not protected by the Migratory Bird Treaty Act?

The MBTA does not apply to:

(1) Nonnative species introduced into the United States or its territories by means of intentional or unintentional human assistance that belong to families or groups covered by the Canadian, Mexican, or Russian Conventions, in accordance with the MBTRA. *See* 70 FR 12710 (March 15, 2005) for a partial list of nonnative, human-introduced bird species in this category. Note, though, that native species that are introduced into parts of the United States where they are not native are still protected under the MBTA regardless of where they occur in the United States or its territories.

(2) Nonnative, human-introduced species that belong to families or groups not covered by the Canadian, Mexican, or Russian Conventions, including Tinamidae (tinamous), Cracidae (chachalacas), Megapodiidae (megapodes), Phasianidae (grouse, ptarmigan, and turkeys), Turnicidae (buttonquails), Odontophoridae (New World quail), Pteroclididae (sandgrouse), Psittacidae (parrots), Dicruridae (drongos), Rhamphastidae (toucans), Musophagidae (turacos), Bucerotidae (hornbills), Bucorvidae (ground-hornbills), Pycnonotidae (bulbuls), Pittidae (pittas), Irenidae (fairy-bluebirds), Timaliidae (babblers), Zosteropidae (white-eyes), Sturnidae (starlings; except as listed in the Japanese Convention), Passeridae (Old World sparrows), Ploceidae (weavers), Estrildidae (estrildid finches), and numerous other families not currently represented in the United States or its territories.

(3) Native species that belong to families or groups represented in the United States, but which are not expressly mentioned by the Canadian, Mexican, or Russian Conventions, including the Megapodiidae (megapodes), Phasianidae (grouse, ptarmigan, and turkeys), Odontophoridae (New World quail), Burhinidae (thick-knees), Glareolidae (pratincoles), Psittacidae (parrots), Todidae (todies), Meliphagidae (honeyeaters), Monarchidae (monarch flycatchers [elepaios]), Zosteropidae (white-eyes), and Coerebidae (bananaquit). It should be noted that this rule supersedes the 70 FR 12710 notice to the extent that they are inconsistent. Specifically, the 1996 amendment to the Canadian Convention included the family Muscicapidae (Old World flycatchers). Thus, all members of the Muscicapidae family are now included on this list. In addition, the Wrentit is now considered a member of the Sylviidae family rather than the Timaliidae family and is now included on this list.

Partial lists of the species included in categories 2 and 3 are available at *http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/MBTAProtectedNonprotected.html*.

Public Comments

We request comments or suggestions on this proposed rule from any interested parties. You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of our previous actions concerning this subject by mail (*see* **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et *seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule does not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic

impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because we are simply updating the list of migratory bird species protected under the Conventions. Consequently, we certify that because this rule does not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. This proposed rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the proposed rule would not have significant takings implications. This proposed rule does not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It would not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the updating of the list of migratory bird species.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this proposed rule. We are not requiring any new permits, reports, or recordkeeping in this proposed rule.

National Environmental Policy Act (NEPA)

Given that the revision of 50 CFR 10.13 is strictly administrative in nature and will have no or minor environmental effects, it is categorically excluded from further NEPA requirements (43 CFR 46.210(h)).

Endangered Species Act (ESA)

Seventy-five of the species on the proposed List of Migratory Birds are also designated as endangered or threatened in all or some portion of their U.S. range under provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–44; 50 CFR 17.11). No legal complications arise from the dual listing since the two lists are developed under separate authorities and for different purposes. Because the rule is strictly administrative in nature, it does not require ESA consultation.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally-recognized Indian tribes and have determined that there are no potential effects. The revisions to existing regulations in this proposed rule are purely administrative in nature and would not interfere with the tribes' ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule only affects the listing of protected species in the United States, it is not a significant regulatory action under Executive Order 12866, and does not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited is available upon request (see **FOR FURTHER INFORMATION CONTACT** above).

List of Subjects in 50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons discussed in the preamble, we propose to amend title 50, chapter I, subchapter B, part 10 of the Code of Federal Regulations, as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. Revise § 10.13 to read as follows:

§ 10.13 List of Migratory Birds.

(a) *Legal authority for this list.* The legal authorities for this list are the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712), the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 742l), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j). The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) *Canada:* Convention between the United States and Great Britain [on behalf of Canada] for the Protection of Migratory Birds, August 16, 1916, 39 Stat. 1702 (T.S. No. 628), as amended;

(2) *Mexico:* Convention between the United States and Mexico for the Protection of Migratory Birds and Game Mammals, February 7, 1936, 50 Stat. 1311 (T.S. No. 912), as amended;

(3) *Japan:* Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their

Environment, March 4, 1972, 25 U.S.T. 3329 (T.I.A.S. No. 7990); and

(4) *Russia:* Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, November 19, 1976, 20 U.S.T. 4647 (T.I.A.S. No. 9073).

(b) *Purpose of this list.* The purpose is to inform the public of the species protected by regulations that enforce the terms of the MBTA. These regulations, found in parts 10, 20, and 21 of this chapter, cover most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds.

(c) *What species are protected as migratory birds?* Species protected as migratory birds are listed in two formats to suit the varying needs of the user: Alphabetically in paragraph (c)(1) of this section and taxonomically in paragraph (c)(2) of this section. Taxonomy and nomenclature generally follow the 7th edition of the American Ornithologists' Union's *Check-list of North American birds* (1998, as amended through 2010). For species not treated by the AOU *Check-list,* we generally follow *The Clements Checklist of Birds of the World* (Clements 2007).

(1) *Alphabetical listing.* Species are listed alphabetically by common (English) group names, with the scientific name of each species following the common name.

ACCENTOR, Siberian, *Prunella montanella*
AKEKEE, *Loxops caeruleirostris*
AKEPA, *Loxops coccineus*
AKIALOA, Greater, *Hemignathus ellisianus*
AKIAPOLAAU, *Hemignathus munroi*
AKIKIKI, *Oreomystis bairdi*
AKOHEKOHE, *Palmeria dolei*
ALAUAHIO, Maui, *Paroreomyza montana*
Oahu, *Paroreomyza maculata*
ALBATROSS, Black-browed, *Thalassarche melanophris*
Black-footed, *Phoebastria nigripes*
Laysan, *Phoebastria immutabilis*
Light-mantled, *Phoebetria palpebrata*
Short-tailed, *Phoebastria albatrus*
Shy, *Thalassarche cauta*
Wandering, *Diomedea exulans*
Yellow-nosed, *Thalassarche chlororhynchos*
AMAKIHI, Hawaii, *Hemignathus virens*
Kauai, *Hemignathus kauaiensis*
Oahu, *Hemignathus flavus*
ANHINGA, *Anhinga anhinga*
ANI, Groove-billed, *Crotophaga sulcirostris*
Smooth-billed, *Crotophaga ani*
ANIANIAU, *Magumma parva*
APAPANE, *Himatione sanguinea*
AUKLET, Cassin's, *Ptychoramphus aleuticus*
Crested, *Aethia cristatella*
Least, *Aethia pusilla*
Parakeet, *Aethia psittacula*
Rhinoceros, *Cerorhinca monocerata*
Whiskered, *Aethia pygmaea*
AVOCET, American, *Recurvirostra americana*
BEAN-GOOSE, Taiga, *Anser fabalis*
Tundra, *Anser serrirostris*
BEARDLESS-TYRANNULET, Northern, *Camptostoma imberbe*
BECARD, Rose-throated, *Pachyramphus aglaiae*
BITTERN, American, *Botaurus lentiginosus*
Black, *Ixobrychus flavicollis*
Least, *Ixobrychus exilis*
Schrenck's, *Ixobrychus eurhythmus*
Yellow, *Ixobrychus sinensis*
BLACK-HAWK, Common, *Buteogallus anthracinus*
BLACKBIRD, Brewer's, *Euphagus cyanocephalus*
Red-winged, *Agelaius phoeniceus*
Rusty, *Euphagus carolinus*
Tawny-shouldered, *Agelaius humeralis*
Tricolored, *Agelaius tricolor*
Yellow-headed, *Xanthocephalus xanthocephalus*
Yellow-shouldered, *Agelaius xanthomus*
BLUEBIRD, Eastern, *Sialia sialis*
Mountain, *Sialia currucoides*
Western, *Sialia mexicana*
BLUETAIL, Red-flanked, *Tarsiger cyanurus*
BLUETHROAT, *Luscinia svecica*
BOBOLINK, *Dolichonyx oryzivorus*
BOOBY, Blue-footed, *Sula nebouxii*
Brown, *Sula leucogaster*
Masked, *Sula dactylatra*
Red-footed, *Sula sula*
BRAMBLING, *Fringilla montifringilla*
BRANT, *Branta bernicla*
BUFFLEHEAD, *Bucephala albeola*
BULLFINCH, Eurasian, *Pyrrhula pyrrhula*
Puerto Rican, *Loxigilla portoricensis*
BUNTING, Blue, *Cyanocompsa parellina*
Gray, *Emberiza variabilis*
Indigo, *Passerina cyanea*
Little, *Emberiza pusilla*
Lark, *Calamospiza melanocorys*
Lazuli, *Passerina amoena*
McKay's, *Plectrophenax hyperboreus*
Painted, *Passerina ciris*
Pallas's, *Emberiza pallasi*
Pine, *Emberiza leucocephalos*
Reed, *Emberiza schoeniclus*
Rustic, *Emberiza rustica*
Snow, *Plectrophenax nivalis*
Varied, *Passerina versicolor*
Yellow-breasted, *Emberiza aureola*
Yellow-browed, *Emberiza chrysophrys*
Yellow-throated, *Emberiza elegans*
BUSHTIT, *Psaltriparus minimus*
CANVASBACK, *Aythya valisineria*
CARACARA, Crested, *Caracara cheriway*
CARDINAL, Northern, *Cardinalis cardinalis*
CARIB, Green-throated, *Eulampis holosericeus*
Purple-throated, *Eulampis jugularis*
CATBIRD, Black, *Melanoptila glabrirostris*
Gray, *Dumetella carolinensis*
CHAFFINCH, Common, *Fringilla coelebs*
CHAT, Yellow-breasted, *Icteria virens*
CHICKADEE, Black-capped, *Poecile atricapillus*
Boreal, *Poecile hudsonicus*
Carolina, *Poecile carolinensis*
Chestnut-backed, *Poecile rufescens*
Gray-headed, *Poecile cinctus*
Mexican, *Poecile sclateri*
Mountain, *Poecile gambeli*
CHUCK-WILL'S-WIDOW, *Caprimulgus carolinensis*
CONDOR, California, *Gymnogyps californianus*
COOT, American, *Fulica americana*
Caribbean, *Fulica caribaea*
Eurasian, *Fulica atra*
Hawaiian, *Fulica alai*
CORMORANT, Brandt's, *Phalacrocorax penicillatus*
Double-crested, *Phalacrocorax auritus*
Great, *Phalacrocorax carbo*
Little Pied, *Phalacrocorax melanoleucos*
Neotropic, *Phalacrocorax brasilianus*
Pelagic, *Phalacrocorax pelagicus*
Red-faced, *Phalacrocorax urile*
COWBIRD, Bronzed, *Molothrus aeneus*
Brown-headed, *Molothrus ater*
Shiny, *Molothrus bonariensis*
CRAKE, Corn, *Crex crex*
Paint-billed, *Neocrex erythrops*
Spotless, *Porzana tabuensis*
Yellow-breasted, *Porzana flaviventer*
CRANE, Common, *Grus grus*
Sandhill, *Grus canadensis*
Whooping, *Grus americana*
CREEPER, Brown, *Certhia americana*
Hawaii, *Oreomystis mana*
CROSSBILL, Red, *Loxia curvirostra*
White-winged, *Loxia leucoptera*
CROW, American, *Corvus brachyrhynchos*
Fish, *Corvus ossifragus*
Hawaiian, *Corvus hawaiiensis*
Mariana, *Corvus kubaryi*
Northwestern, *Corvus caurinus*
Tamaulipas, *Corvus imparatus*
White-necked, *Corvus leucognaphalus*
CUCKOO, Black-billed, *Coccyzus erythropthalmus*
Common, *Cuculus canorus*
Mangrove, *Coccyzus minor*
Oriental, *Cuculus optatus*

Yellow-billed, *Coccyzus americanus*
CURLEW, Bristle-thighed, *Numenius tahitiensis*
Eskimo, *Numenius borealis*
Eurasian, *Numenius arquata*
Far Eastern, *Numenius madagascariensis*
Little, *Numenius minutus*
Long-billed, *Numenius americanus*
DICKCISSEL, *Spiza americana*
DIPPER, American, *Cinclus mexicanus*
DOTTEREL, Eurasian, *Charadrius morinellus*
DOVE, Inca, *Columbina inca*
Mourning, *Zenaida macroura*
White-tipped, *Leptotila verreauxi*
White-winged, *Zenaida asiatica*
Zenaida, *Zenaida aurita*
DOVEKIE, *Alle alle*
DOWITCHER, Long-billed, *Limnodromus scolopaceus*
Short-billed, *Limnodromus griseus*
DUCK, American Black, *Anas rubripes*
Eastern Spot-billed, *Anas zonorhyncha*
Falcated, *Anas falcata*
Harlequin, *Histrionicus histrionicus*
Hawaiian, *Anas wyvilliana*
Laysan, *Anas laysanensis*
Long-tailed, *Clangula hyemalis*
Masked, *Nomonyx dominicus*
Mottled, *Anas fulvigula*
Muscovy, *Cairina moschata*
Pacific Black, *Anas superciliosa*
Ring-necked, *Aythya collaris*
Ruddy, *Oxyura jamaicensis*
Tufted, *Aythya fuligula*
Wood, *Aix sponsa*
DUNLIN, *Calidris alpina*
EAGLE, Bald, *Haliaeetus leucocephalus*
Golden, *Aquila chrysaetos*
White-tailed, *Haliaeetus albicilla*
EGRET, Cattle, *Bubulcus ibis*
Chinese, *Egretta eulophotes*
Great, *Ardea alba*
Intermediate, *Mesophoyx intermedia*
Little, *Egretta garzetta*
Reddish, *Egretta rufescens*
Snowy, *Egretta thula*
EIDER, Common, *Somateria mollissima*
King, *Somateria spectabilis*
Spectacled, *Somateria fischeri*
Steller's, *Polysticta stelleri*
ELAENIA, Caribbean, *Elaenia martinica*
Greenish, *Myiopagis viridicata*
White-crested, *Elaenia albiceps*
EMERALD, Puerto Rican, *Chlorostilbon maugaeus*
EUPHONIA, Antillean, *Euphonia musica*
FALCON, Aplomado, *Falco femoralis*
Peregrine, *Falco peregrinus*
Prairie, *Falco mexicanus*
Red-footed, *Flaco vespertinus*
FIELDFARE, *Turdus pilaris*
FINCH, Cassin's, *Carpodacus cassinii*
House, *Carpodacus mexicanus*
Laysan, *Telespiza cantans*
Nihoa, *Telespiza ultima*
Purple, *Carpodacus purpureus*
FLAMINGO, American, *Phoenicopterus ruber*
FLICKER, Gilded, *Colaptes chrysoides*
Northern, *Colaptes auratus*
FLYCATCHER, Acadian, *Empidonax virescens*
Alder, *Empidonax alnorum*
Ash-throated, *Myiarchus cinerascens*
Asian Brown, *Muscicapa dauurica*
Brown-crested, *Myiarchus tyrannulus*
Buff-breasted, *Empidonax fulvifrons*
Cordilleran, *Empidonax occidentalis*
Crowned Slaty, *Empidonomus aurantioatrocristatus*
Dark-sided, *Muscicapa sibirica*
Dusky, *Empidonax oberholseri*
Dusky-capped, *Myiarchus tuberculifer*
Fork-tailed, *Tyrannus savana*
Gray, *Empidonax wrightii*
Gray-streaked, *Muscicapa griseisticta*
Great Crested, *Myiarchus crinitus*
Hammond's, *Empidonax hammondii*
La Sagra's, *Myiarchus sagrae*
Least, *Empidonax minimus*
Mugimaki, *Ficedula mugimaki*
Narcissus, *Ficedula narcissina*
Nutting's, *Myiarchus nuttingi*
Olive-sided, *Contopus cooperi*
Pacific-slope, *Empidonax difficilis*
Piratic, *Legatus leucophalus*
Puerto Rican, *Myiarchus antillarum*
Scissor-tailed, *Tyrannus forficatus*
Social, *Myiozetetes similis*
Spotted, *Muscicapa striata*
Sulphur-bellied, *Myiodynastes luteiventris*
Taiga, *Ficedula albicilla*
Tufted, *Mitrephanes phaeocercus*
Variegated, *Empidonomus varius*
Vermilion, *Pyrocephalus rubinus*
Willow, *Empidonax traillii*
Yellow-bellied, *Empidonax flaviventris*
FOREST-FALCON, Collared, *Micrastur semitorquatus*
FRIGATEBIRD, Great, *Fregata minor*
Lesser, *Fregata ariel*
Magnificent, *Fregata magnificens*
FROG-HAWK, Gray, *Accipiter soloensis*
FRUIT-DOVE, Crimson-crowned, *Ptilinopus porphyraceus*
Many-colored, *Ptilinopus perousii*
Mariana, *Ptilinopus roseicapilla*
FULMAR, Northern, *Fulmarus glacialis*
GADWALL, *Anas strepera*
GALLINULE, Azure, *Porphyrio flavirostris*
Purple, *Porphyrio martinica*
GANNET, Northern, *Morus bassanus*
GARGANEY, *Anas querquedula*
GNATCATCHER, Black-capped, *Polioptila nigriceps*
Black-tailed, *Polioptila melanura*
Blue-gray, *Polioptila caerulea*
California, *Polioptila californica*
GODWIT, Bar-tailed, *Limosa lapponica*
Black-tailed, *Limosa limosa*
Hudsonian, *Limosa haemastica*
Marbled, *Limosa fedoa*
GOLDEN-PLOVER, American, *Pluvialis dominica*
European, *Pluvialis apricaria*
Pacific, *Pluvialis fulva*
GOLDENEYE, Barrow's, *Bucephala islandica*
Common, *Bucephala clangula*
GOLDFINCH, American, *Spinus tristis*
Lawrence's, *Spinus lawrencei*
Lesser, *Spinus psaltria*
GOOSE, Barnacle, *Branta leucopsis*
Canada, *Branta canadensis* (including Cackling Goose, *Branta hutchinsii*)
Emperor, *Chen canagica*
Greater White-fronted, *Anser albifrons*
Hawaiian, *Branta sandvicensis*
Lesser White-fronted, *Anser erythropus*
Ross's, *Chen rossii*
Snow, *Chen caerulescens*
GOSHAWK, Northern, *Accipiter gentilis*
GRACKLE, Boat-tailed, *Quiscalus major*
Common, *Quiscalus quiscula*
Great-tailed, *Quiscalus mexicanus*
Greater Antillean, *Quiscalus niger*
GRASSHOPPER-WARBLER, Middendorff's, *Locustella ochotensis*
GRASSQUIT, Black-faced, *Tiaris bicolor*
Yellow-faced, *Tiaris olivaceus*
GREBE, Clark's, *Aechmophorus clarkii*
Eared, *Podiceps nigricollis*
Horned, *Podiceps auritus*
Least, *Tachybaptus dominicus*
Pied-billed, *Podilymbus podiceps*
Red-necked, *Podiceps grisegena*
Western, *Aechmophorus occidentalis*
GREENFINCH, Oriental, *Chloris sinica*
GREENSHANK, Common, *Tringa nebularia*
Nordmann's, *Tringa guttifer*
GROSBEAK, Black-headed, *Pheucticus melanocephalus*
Blue, *Passerina caerulea*
Crimson-collared, *Rhodothraupis celaeno*
Evening, *Coccothraustes vespertinus*
Pine, *Pinicola enucleator*
Rose-breasted, *Pheucticus ludovicianus*
Yellow, *Pheucticus chrysopeplus*
GROUND-DOVE, Common, *Columbina passerina*
Friendly, *Gallicolumba stairi*
Ruddy, *Columbina talpacoti*
White-throated, *Gallicolumba xanthonura*
GUILLEMOT, Black, *Cepphus grylle*
Pigeon, *Cepphus columba*
GULL, Belcher's, *Larus belcheri*
Black-headed, *Chroicocephalus ridibundus*
Black-tailed, *Larus crassirostris*
Bonaparte's, *Chroicocephalus philadelphia*
California, *Larus californicus*
Franklin's, *Leucophaeus pipixcan*
Glaucous, *Larus hyperboreus*

Glaucous-winged, *Larus glaucescens*
Gray-hooded, *Chroicocephalus cirrocephalus*
Great Black-backed, *Larus marinus*
Heermann's, *Larus heermanni*
Herring, *Larus argentatus*
Iceland, *Larus glaucoides*
Ivory, *Pagophila eburnea*
Kelp, *Larus dominicanus*
Laughing, *Leucophaeus atricilla*
Lesser Black-backed, *Larus fuscus*
Little, *Hydrocoloeus minutus*
Mew, *Larus canus*
Ring-billed, *Larus delawarensis*
Ross's, *Rhodostethia rosea*
Sabine's, *Xema sabini*
Slaty-backed, *Larus schistisagus*
Swallow-tailed, *Creagrus furcatus*
Thayer's, *Larus thayeri*
Western, *Larus occidentalis*
Yellow-footed, *Larus livens*
Yellow-legged, *Larus michahellis*
GYRFALCON, *Falco rusticolus*
HARRIER, Northern, *Circus cyaneus*
HAWFINCH, *Coccothraustes coccothraustes*
HAWK, Broad-winged, *Buteo platypterus*
Cooper's, *Accipiter cooperii*
Crane, *Geranospiza caerulescens*
Ferruginous, *Buteo regalis*
Gray, *Buteo nitidus*
Harris's, *Parabuteo unicinctus*
Hawaiian, *Buteo solitarius*
Red-shouldered, *Buteo lineatus*
Red-tailed, *Buteo jamaicensis*
Roadside, *Buteo magnirostris*
Rough-legged, *Buteo lagopus*
Sharp-shinned, *Accipiter striatus*
Short-tailed, *Buteo brachyurus*
Swainson's, *Buteo swainsoni*
White-tailed, *Buteo albicaudatus*
Zone-tailed, *Buteo albonotatus*
HAWK-CUCKOO, Hodgson's, *Cuculus fugax*
HAWK-OWL, Brown, *Ninox scutulata*
HERON, Gray, *Ardea cinerea*
Great Blue, *Ardea herodias*
Green, *Butorides virescens*
Little Blue, *Egretta caerulea*
Tricolored, *Egretta tricolor*
HOBBY, Eurasian, *Falco subbuteo*
HOOPOE, Eurasian, *Upupa epops*
HOUSE-MARTIN, Common, *Delichon urbicum*
HUMMINGBIRD, Allen's, *Selasphorus sasin*
Anna's, *Calypte anna*
Antillean Crested, *Orthorhyncus cristatus*
Berylline, *Amazilia beryllina*
Black-chinned, *Archilochus alexandri*
Blue-throated, *Lampornis clemenciae*
Broad-billed, *Cynanthus latirostris*
Broad-tailed, *Selasphorus platycercus*
Buff-bellied, *Amazilia yucatanensis*
Bumblebee, *Atthis heloisa*
Calliope, *Stellula calliope*
Cinnamon, *Amazilia rutila*
Costa's, *Calypte costae*
Lucifer, *Calothorax lucifer*
Magnificent, *Eugenes fulgens*
Ruby-throated, *Archilochus colubris*
Rufous, *Selasphorus rufus*
Violet-crowned, *Amazilia violiceps*
White-eared, *Hylocharis leucotis*
Xantus's, *Hylocharis xantusii*
IBIS, Glossy, *Plegadis falcinellus*
Scarlet, *Eudocimus ruber*
White, *Eudocimus albus*
White-faced, *Plegadis chihi*
IIWI, *Vestiaria coccinea*
IMPERIAL-PIGEON, Pacific, *Ducula pacifica*
JABIRU, *Jabiru mycteria*
JACANA, Northern, *Jacana spinosa*
JAEGER, Long-tailed, *Stercorarius longicaudus*
Parasitic, *Stercorarius parasiticus*
Pomarine, *Stercorarius pomarinus*
JAY, Blue, *Cyanocitta cristata*
Brown, *Psilorhinus morio*
Gray, *Perisoreus canadensis*
Green, *Cyanocorax yncas*
Mexican, *Aphelocoma ultramarina*
Pinyon, *Gymnorhinus cyanocephalus*
Steller's, *Cyanocitta stelleri*
JUNCO, Dark-eyed, *Junco hyemalis*
Yellow-eyed, *Junco phaeonotus*
KAKAWAHIE, *Paroreomyza flammea*
KAMAO, *Myadestes myadestinus*
KESTREL, American, *Falco sparverius*
Eurasian, *Falco tinnunculus*
KILLDEER, *Charadrius vociferus*
KINGBIRD, Cassin's, *Tyrannus vociferans*
Couch's, *Tyrannus couchii*
Eastern, *Tyrannus tyrannus*
Gray, *Tyrannus dominicensis*
Loggerhead, *Tyrannus caudifasciatus*
Thick-billed, *Tyrannus crassirostris*
Tropical, *Tyrannus melancholicus*
Western, *Tyrannus verticalis*
KINGFISHER, Belted, *Megaceryle alcyon*
Collared, *Todirhamphus chloris*
Green, *Chloroceryle americana*
Micronesian, *Todirhamphus cinnamominus*
Ringed, *Megaceryle torquata*
KINGLET, Golden-crowned, *Regulus satrapa*
Ruby-crowned, *Regulus calendula*
KISKADEE, Great, *Pitangus sulphuratus*
KITE, Black, *Milvus migrans*
Hook-billed, *Chondrohierax uncinatus*
Mississippi, *Ictinia mississippiensis*
Snail, *Rostrhamus sociabilis*
Swallow-tailed, *Elanoides forficatus*
White-tailed, *Elanus leucurus*
KITTIWAKE, Black-legged, *Rissa tridactyla*
Red-legged, *Rissa brevirostris*
KNOT, Great, *Calidris tenuirostris*
Red, *Calidris canutus*
LAPWING, Northern, *Vanellus vanellus*
LARK, Horned, *Eremophila alpestris*
Sky, *Alauda arvensis*
LEAF-WARBLER, Pallas's, *Phylloscopus proregulus*
LIMPKIN, *Aramus guarauna*
LIZARD-CUCKOO, Puerto Rican, *Coccyzus vieilloti*
LONGSPUR, Chestnut-collared, *Calcarius ornatus*
Lapland, *Calcarius lapponicus*
McCown's, *Rhynchophanes mccownii*
Smith's, *Calcarius pictus*
LOON, Arctic, *Gavia arctica*
Common, *Gavia immer*
Pacific, *Gavia pacifica*
Red-throated, *Gavia stellata*
Yellow-billed, *Gavia adamsii*
MAGPIE, Black-billed, *Pica hudsonia*
Yellow-billed, *Pica nuttalli*
MALLARD, *Anas platyrhynchos*
MANGO, Antillean, *Anthracothorax dominicus*
Green, *Anthracothorax viridis*
Green-breasted, *Anthracothorax prevostii*
MARTIN, Brown-chested, *Progne tapera*
Caribbean, *Progne dominicensis*
Cuban, *Progne cryptoleuca*
Gray-breasted, *Progne chalybea*
Purple, *Progne subis*
Southern, *Progne elegans*
MEADOWLARK, Eastern, *Sturnella magna*
Western, *Sturnella neglecta*
MERGANSER, Common, *Mergus merganser*
Hooded, *Lophodytes cucullatus*
Red-breasted, *Mergus serrator*
MERLIN, *Falco columbarius*
MILLERBIRD, *Acrocephalus familiaris*
MOCKINGBIRD, Bahama, *Mimus gundlachii*
Blue, *Melanotis caerulescens*
Northern, *Mimus polyglottos*
MOORHEN, Common, *Gallinula chloropus*
MURRE, Common, *Uria aalge*
Thick-billed, *Uria lomvia*
MURRELET, Ancient, *Synthliboramphus antiquus*
Craveri's, *Synthliboramphus craveri*
Kittlitz's, *Brachyramphus brevirostris*
Long-billed, *Brachyramphus perdix*
Marbled, *Brachyramphus marmoratus*
Xantus's, *Synthliboramphus hypoleucus*
NEEDLETAIL, White-throated, *Hirundapus caudacutus*
NIGHT-HERON, Black-crowned, *Nycticorax nycticorax*
Japanese, *Gorsachius goisagi*
Malayan, *Gorsachius melanolophus*
Yellow-crowned, *Nyctanassa violacea*
NIGHTHAWK, Antillean, *Chordeiles gundlachii*
Common, *Chordeiles minor*
Lesser, *Chordeiles acutipennis*
NIGHTINGALE-THRUSH, Black-headed, *Catharus mexicanus*
Orange-billed, *Catharus*

aurantiirostris
NIGHTJAR, Buff-collared, *Caprimulgus ridgwayi*
Gray, *Caprimulgus indicus*
Puerto Rican, *Caprimulgus noctitherus*
NODDY, Black, *Anous minutus*
Blue-gray, *Procelsterna cerulea*
Brown, *Anous stolidus*
NUKUPUU, *Hemignathus lucidus*
NUTCRACKER, Clark's, *Nucifraga columbiana*
NUTHATCH, Brown-headed, *Sitta pusilla*
Pygmy, *Sitta pygmaea*
Red-breasted, *Sitta canadensis*
White-breasted, *Sitta carolinensis*
OLOMAO, *Myadestes lanaiensis*
OMAO, *Myadestes obscurus*
ORIOLE, Altamira, *Icterus gularis*
Audubon's, *Icterus graduacauda*
Baltimore, *Icterus galbula*
Black-vented, *Icterus wagleri*
Bullock's, *Icterus bullockii*
Hooded, *Icterus cucullatus*
Orchard, *Icterus spurius*
Puerto Rican, *Icterus portoricensis*
Scott's, *Icterus parisorum*
Streak-backed, *Icterus pustulatus*
OSPREY, *Pandion haliaetus*
OU, *Psittirostra psittacea*
OVENBIRD, *Seiurus aurocapilla*
OWL, Barn, *Tyto alba*
Barred, *Strix varia*
Boreal, *Aegolius funereus*
Burrowing, *Athene cunicularia*
Elf, *Micrathene whitneyi*
Flammulated, *Otus flammeolus*
Great Gray, *Strix nebulosa*
Great Horned, *Bubo virginianus*
Long-eared, *Asio otus*
Mottled, *Ciccaba virgata*
Northern Hawk, *Surnia ulula*
Northern Saw-whet, *Aegolius acadicus*
Short-eared, *Asio flammeus*
Snowy, *Bubo scandiacus*
Spotted, *Strix occidentalis*
Stygian, *Asio stygius*
OYSTERCATCHER, American, *Haematopus palliatus*
Black, *Haematopus bachmani*
Eurasian, *Haematopus ostralegus*
PALILA, *Loxioides bailleui*
PALM-SWIFT, Antillean, *Tachornis phoenicobia*
PARROTBILL, Maui, *Pseudonestor xanthophrys*
PARULA, Northern, *Parula americana*
Tropical, *Parula pitiayumi*
PAURAQUE, Common, *Nyctidromus albicollis*
PELICAN, American White, *Pelecanus erythrorhynchos*
Brown, *Pelecanus occidentalis*
PETREL, Bermuda, *Pterodroma cahow*
Black-capped, *Pterodroma hasitata*
Black-winged, *Pterodroma nigripennis*
Bonin, *Pterodroma hypoleuca*
Bulwer's, *Bulweria bulwerii*
Cook's, *Pterodroma cookii*
Gould's, *Pterodroma leucoptera*
Great-winged, *Pterodroma macroptera*
Hawaiian, *Pterodroma sandwichensis*
Herald, *Pterodroma arminjoniana*
Jouanin's, *Bulweria fallax*
Juan Fernandez, *Pterodroma externa*
Kermadec, *Pterodroma neglecta*
Mottled, *Pterodroma inexpectata*
Murphy's, *Pterodroma ultima*
Parkinson's, *Procellaria parkinsoni*
Phoenix, *Pterodroma alba*
Stejneger's, *Pterodroma longirostris*
Tahiti, *Pterodroma rostrata*
White-necked, *Pterodroma cervicalis*
PEWEE, Cuban, *Contopus caribaeus*
Greater, *Contopus pertinax*
Hispaniolan, *Contopus hispaniolensis*
Lesser Antillean, *Contopus latirostris*
PHAINOPEPLA, *Phainopepla nitens*
PHALAROPE, Red, *Phalaropus fulicarius*
Red-necked, *Phalaropus lobatus*
Wilson's, *Phalaropus tricolor*
PHOEBE, Black, *Sayornis nigricans*
Eastern, *Sayornis phoebe*
Say's, *Sayornis saya*
PIGEON, Band-tailed, *Patagioenas fasciata*
Plain, *Patagioenas inornata*
Red-billed, *Patagioenas flavirostris*
Scaly-naped, *Patagioenas squamosa*
White-crowned, *Patagioenas leucocephala*
PINTAIL, Northern, *Anas acuta*
White-cheeked, *Anas bahamensis*
PIPIT, American, *Anthus rubescens*
Olive-backed, *Anthus hodgsoni*
Pechora, *Anthus gustavi*
Red-throated, *Anthus cervinus*
Sprague's, *Anthus spragueii*
Tree, *Anthus trivialis*
PLOVER, Black-bellied, *Pluvialis squatarola*
Collared, *Charadrius collaris*
Common Ringed, *Charadrius hiaticula*
Little Ringed, *Charadrius dubius*
Mountain, *Charadrius montanus*
Piping, *Charadrius melodus*
Semipalmated, *Charadrius semipalmatus*
Snowy, *Charadrius alexandrinus*
Wilson's, *Charadrius wilsonia*
POCHARD, Baer's, *Aythya baeri*
Common, *Aythya ferina*
POND-HERON, Chinese, *Ardeola bacchus*
POORWILL, Common, *Phalaenoptilus nuttallii*
POO-ULI, *Melamprosops phaeosoma*
PUAIOHI, *Myadestes palmeri*
PUFFIN, Atlantic, *Fratercula arctica*
Horned, *Fratercula corniculata*
Tufted, *Fratercula cirrhata*
PYGMY-OWL, Ferruginous, *Glaucidium brasilianum*
Northern, *Glaucidium gnoma*
PYRRHULOXIA, *Cardinalis sinuatus*
QUAIL-DOVE, Bridled, *Geotrygon mystacea*
Key West, *Geotrygon chrysia*
Ruddy, *Geotrygon montana*
QUETZEL, Eared, *Euptilotis neoxenus*
RAIL, Black, *Laterallus jamaicensis*
Buff-banded, *Gallirallus philippensis*
Clapper, *Rallus longirostris*
Guam, *Gallirallus owstoni*
King, *Rallus elegans*
Spotted, *Pardirallus maculatus*
Virginia, *Rallus limicola*
Yellow, *Coturnicops noveboracensis*
RAVEN, Chihuahuan, *Corvus cryptoleucus*
Common, *Corvus corax*
RAZORBILL, *Alca torda*
REDHEAD, *Aythya americana*
REDPOLL, Common, *Acanthis flammea*
Hoary, *Acanthis hornemanni*
REDSHANK, Spotted, *Tringa erythropus*
REDSTART, American, *Setophaga ruticilla*
Painted, *Myioborus pictus*
Slate-throated, *Myioborus miniatus*
REED-WARBLER, Nightingale, *Acrocephalus luscinia*
REEF-EGRET, Pacific, *Egretta sacra*
REEF-HERON, Western, *Egretta gularis*
ROADRUNNER, Greater, *Geococcyx californianus*
ROBIN, American, *Turdus migratorius*
Rufous-backed, *Turdus rufopalliatus*
Rufous-tailed, *Luscinia sibilans*
Siberian Blue, *Luscinia cyane*
ROCK-THRUSH, Blue, *Monticola solitarius*
ROSEFINCH, Common, *Carpodacus erythrinus*
ROSY-FINCH, Black, *Leucosticte atrata*
Brown-capped, *Leucosticte australis*
Gray-crowned, *Leucosticte tephrocotis*
RUBYTHROAT, Siberian, *Luscinia calliope*
RUFF, *Philomachus pugnax*
SANDERLING, *Calidris alba*
SANDPIPER, Baird's, *Calidris bairdii*
Broad-billed, *Limicola falcinellus*
Buff-breasted, *Tryngites subruficollis*
Common, *Actitis hypoleucos*
Curlew, *Calidris ferruginea*
Green, *Tringa ochropus*
Least, *Calidris minutilla*
Marsh, *Tringa stagnatilis*
Pectoral, *Calidris melanotos*
Purple, *Calidris maritima*
Rock, *Calidris ptilocnemis*
Semipalmated, *Calidris pusilla*
Sharp-tailed, *Calidris acuminata*
Solitary, *Tringa solitaria*
Spoon-billed, *Eurynorhynchus pygmeus*
Spotted, *Actitis macularius*
Stilt, *Calidris himantopus*
Terek, *Xenus cinereus*
Upland, *Bartramia longicauda*
Western, *Calidris mauri*

White-rumped, *Calidris fuscicollis*
Wood, *Tringa glareola*
SAND-PLOVER, Greater, *Charadrius leschenaultii*
Lesser, *Charadrius mongolus*
SAPSUCKER, Red-breasted, *Sphyrapicus ruber*
Red-naped, *Sphyrapicus nuchalis*
Williamson's, *Sphyrapicus thyroideus*
Yellow-bellied, *Sphyrapicus varius*
SCAUP, Greater, *Aythya marila*
Lesser, *Aythya affinis*
SCOPS-OWL, Oriental, *Otus sunia*
SCOTER, Black, *Melanitta americana*
Surf, *Melanitta perspicillata*
White-winged, *Melanitta fusca*
SCREECH-OWL, Eastern, *Megascops asio*
Puerto Rican, *Megascops nudipes*
Western, *Megascops kennicottii*
Whiskered, *Megascops trichopsis*
SCRUB-JAY, Florida, *Aphelocoma coerulescens*
Island, *Aphelocoma insularis*
Western, *Aphelocoma californica*
SEA-EAGLE, Steller's, *Haliaeetus pelagicus*
SEEDEATER, White-collared, *Sporophila torqueola*
SHEARWATER, Audubon's, *Puffinus lherminieri*
Black-vented, *Puffinus opisthomelas*
Buller's, *Puffinus bulleri*
Cape Verde, *Calonectris edwardsii*
Christmas, *Puffinus nativitatis*
Cory's, *Calonectris diomedea*
Flesh-footed, *Puffinus carneipes*
Great, *Puffinus gravis*
Little, *Puffinus assimilis*
Manx, *Puffinus puffinus*
Pink-footed, *Puffinus creatopus*
Short-tailed, *Puffinus tenuirostris*
Sooty, *Puffinus griseus*
Streaked, *Calonectris leucomelas*
Townsend's, *Puffinus auricularis*
Wedge-tailed, *Puffinus pacificus*
SHOVELER, Northern, *Anas clypeata*
SHRIKE, Brown, *Lanius cristatus*
Loggerhead, *Lanius ludovicianus*
Northern, *Lanius excubitor*
SILKY-FLYCATCHER, Gray, *Ptilogonys cinereus*
SISKIN, Eurasian, *Spinus spinus*
Pine, *Spinus pinus*
SKIMMER, Black, *Rynchops niger*
SKUA, Great, *Stercorarius skua*
South Polar, *Stercorarius maccormicki*
SMEW, *Mergellus albellus*
SNIPE, Common, *Gallinago gallinago*
Jack, *Lymnocryptes minimus*
Pin-tailed, *Gallinago stenura*
Swinhoe's, *Gallinago megala*
Wilson's, *Gallinago delicata*
SOLITAIRE, Townsend's, *Myadestes townsendi*
SORA, *Porzana carolina*
SPARROW, American Tree, *Spizella arborea*
Bachman's, *Peucaea aestivalis*
Baird's, *Ammodramus bairdii*
Black-chinned, *Spizella atrogularis*
Black-throated, *Amphispiza bilineata*
Botteri's, *Peucaea botterii*
Brewer's, *Spizella breweri*
Cassin's, *Peucaea cassinii*
Chipping, *Spizella passerina*
Clay-colored, *Spizella pallida*
Field, *Spizella pusilla*
Five-striped, *Amphispiza quinquestriata*
Fox, *Passerella iliaca*
Golden-crowned, *Zonotrichia atricapilla*
Grasshopper, *Ammodramus savannarum*
Harris's, *Zonotrichia querula*
Henslow's, *Ammodramus henslowii*
Lark, *Chondestes grammacus*
Le Conte's, *Ammodramus leconteii*
Lincoln's, *Melospiza lincolnii*
Nelson's, *Ammodramus nelsoni*
Olive, *Arremonops rufivirgatus*
Rufous-crowned, *Aimophila ruficeps*
Rufous-winged, *Peucaea carpalis*
Sage, *Amphispiza belli*
Saltmarsh, *Ammodramus caudacutus*
Savannah, *Passerculus sandwichensis*
Seaside, *Ammodramus maritimus*
Song, *Melospiza melodia*
Swamp, *Melospiza georgiana*
Vesper, *Pooecetes gramineus*
White-crowned, *Zonotrichia leucophrys*
White-throated, *Zonotrichia albicollis*
Worthen's, *Spizella wortheni*
SPARROWHAWK, Japanese, *Accipiter gularis*
SPINDALIS, Puerto Rican, *Spindalis portoricensis*
Western, *Spindalis zena*
SPOONBILL, Roseate, *Platalea ajaja*
STARLING, Chestnut-cheeked, *Sturnus philippensis*
White-cheeked, *Sturnus cineraceus*
STARTHROAT, Plain-capped, *Heliomaster constantii*
STILT, Black-necked, *Himantopus mexicanus*
Black-winged, *Himantopus himantopus*
STINT, Little, *Calidris minuta*
Long-toed, *Calidris subminuta*
Red-necked, *Calidris ruficollis*
Temminck's, *Calidris temminckii*
STONECHAT, *Saxicola torquatus*
STORK, Wood, *Mycteria americana*
STORM-PETREL, Ashy, *Oceanodroma homochroa*
Band-rumped, *Oceanodroma castro*
Black, *Oceanodroma melania*
Black-bellied, *Fregetta tropica*
Fork-tailed, *Oceanodroma furcata*
Leach's, *Oceanodroma leucorhoa*
Least, *Oceanodroma microsoma*
Matsudaira's, *Oceanodroma matsudairae*
Polynesian, *Nesofregetta fuliginosa*
Ringed, *Oceanodroma hornbyi*
Swinhoe's, *Oceanodroma monorhis*
Tristram's, *Oceanodroma tristrami*
Wedge-rumped, *Oceanodroma tethys*
White-faced, *Pelagodroma marina*
White-bellied, *Fregetta grallaria*
Wilson's, *Oceanites oceanicus*
SURFBIRD, *Aphriza virgata*
SWALLOW, Bahama, *Tachycineta cyaneoviridis*
Bank, *Riparia riparia*
Barn, *Hirundo rustica*
Cave, *Petrochelidon fulva*
Cliff, *Petrochelidon pyrrhonota*
Mangrove, *Tachycineta albilinea*
Northern Rough-winged, *Stelgidopteryx serripennis*
Tree, *Tachycineta bicolor*
Violet-green, *Tachycineta thalassina*
SWAMPHEN, Purple, *Porphyrio porphyrio*
SWAN, Trumpeter, *Cygnus buccinator*
Tundra, *Cygnus columbianus*
Whooper, *Cygnus cygnus*
SWIFT, Alpine, *Apus melba*
Black, *Cypseloides niger*
Chimney, *Chaetura pelagica*
Common, *Apus apus*
Fork-tailed, *Apus pacificus*
Short-tailed, *Chaetura brachyura*
Vaux's, *Chaetura vauxi*
White-collared, *Streptoprocne zonaris*
White-throated, *Aeronautes saxatalis*
SWIFTLET, Mariana, *Aerodramus bartschi*
White-rumped, *Aerodramus spodiopygius*
TANAGER, Flame-colored, *Piranga bidentata*
Hepatic, *Piranga flava*
Puerto Rican, *Nesospingus speculiferus*
Scarlet, *Piranga olivacea*
Summer, *Piranga rubra*
Western, *Piranga ludoviciana*
TATTLER, Gray-tailed, *Tringa brevipes*
Wandering, *Tringa incana*
TEAL, Baikal, *Anas formosa*
Blue-winged, *Anas discors*
Cinnamon, *Anas cyanoptera*
Green-winged, *Anas crecca*
TERN, Aleutian, *Onychoprion aleuticus*
Arctic, *Sterna paradisaea*
Black, *Chlidonias niger*
Black-naped, *Sterna sumatrana*
Bridled, *Onychoprion anaethetus*
Caspian, *Hydroprogne caspia*
Common, *Sterna hirundo*
Elegant, *Thalasseus elegans*
Forster's, *Sterna forsteri*
Gray-backed, *Onychoprion lunatus*
Great Crested, *Thalasseus bergii*
Gull-billed, *Gelochelidon nilotica*
Large-billed, *Phaetusa simplex*
Least, *Sternula antillarum*
Little, *Sternula albifrons*
Roseate, *Sterna dougallii*
Royal, *Thalesseus maximus*
Sandwich, *Thalesseus sandvicensis*

Sooty, *Onychoprion fuscatus*
Whiskered, *Chlidonias hybrida*
White, *Gygis alba*
White-winged, *Chlidonias leucopterus*
THRASHER, Bendire's, *Toxostoma bendirei*
Brown, *Toxostoma rufum*
California, *Toxostoma redivivum*
Crissal, *Toxostoma crissale*
Curve-billed, *Toxostoma curvirostre*
Le Conte's, *Toxostoma lecontei*
Long-billed, *Toxostoma longirostre*
Pearly-eyed, *Margarops fuscatus*
Sage, *Oreoscoptes montanus*
THRUSH, Aztec, *Ridgwayia pinicola*
Bicknell's, *Catharus bicknelli*
Clay-colored, *Turdus grayi*
Dusky, *Turdus naumanni*
Eyebrowed, *Turdus obscurus*
Gray-cheeked, *Catharus minimus*
Hermit, *Catharus guttatus*
Red-legged, *Turdus plumbeus*
Swainson's, *Catharus ustulatus*
Varied, *Ixoreus naevius*
White-throated, *Turdus assimilis*
Wood, *Hylocichla mustelina*
TITMOUSE, Black-crested, *Baeolophus atricristatus*
Bridled, *Baeolophus wollweberi*
Juniper, *Baeolophus ridgwayi*
Oak, *Baeolophus inornatus*
Tufted, *Baeolophus bicolor*
TITYRA, Masked, *Tityra semifasciata*
TOWHEE, Abert's, *Melozone aberti*
California, *Melozone crissalis*
Canyon, *Melozone fusca*
Eastern, *Pipilo erythrophthalmus*
Green-tailed, *Pipilo chlorurus*
Spotted, *Pipilo maculatus*
TROGON, Elegant, *Trogon elegans*
TROPICBIRD, Red-billed, *Phaethon aethereus*
Red-tailed, *Phaethon rubricauda*
White-tailed, *Phaethon lepturus*
TURNSTONE, Black, *Arenaria melanocephala*
Ruddy, *Arenaria interpres*
TURTLE-DOVE, Oriental, *Streptopelia orientalis*
VEERY, *Catharus fuscescens*
VERDIN, *Auriparus flaviceps*
VIOLETEAR, Green, *Colibri thalassinus*
VIREO, Bell's, *Vireo bellii*
Black-capped, *Vireo atricapillus*
Black-whiskered, *Vireo altiloquus*
Blue-headed, *Vireo solitarius*
Cassin's, *Vireo cassinii*
Gray, *Vireo vicinior*
Hutton's, *Vireo huttoni*
Philadelphia, *Vireo philadelphicus*
Plumbeous, *Vireo plumbeus*
Puerto Rican, *Vireo latimeri*
Red-eyed, *Vireo olivaceus*
Thick-billed, *Vireo crassirostris*
Warbling, *Vireo gilvus*
White-eyed, *Vireo griseus*
Yellow-green, *Vireo flavoviridis*
Yellow-throated, *Vireo flavifrons*
Yucatan, *Vireo magister*
VULTURE, Black, *Coragyps atratus*
Turkey, *Cathartes aura*
WAGTAIL, Citrine, *Motacilla citreola*
Eastern Yellow, *Motacilla tschutschensis*
Gray, *Motacilla cinerea*
White, *Motacilla alba*
WARBLER, Adelaide's, *Dendroica adelaidae*
Arctic, *Phylloscopus borealis*
Bachman's, *Vermivora bachmanii*
Bay-breasted, *Dendroica castanea*
Black-and-white, *Mniotilta varia*
Black-throated Blue, *Dendroica caerulescens*
Black-throated Gray, *Dendroica nigrescens*
Black-throated Green, *Dendroica virens*
Blackburnian, *Dendroica fusca*
Blackpoll, *Dendroica striata*
Blue-winged, *Vermivora cyanoptera*
Canada, *Wilsonia canadensis*
Cape May, *Dendroica tigrina*
Cerulean, *Dendroica cerulea*
Chestnut-sided, *Dendroica pensylvanica*
Colima, *Oreothlypis crissalis*
Connecticut, *Oporornis agilis*
Crescent-chested, *Oreothlypis superciliosa*
Dusky, *Phylloscopus fuscatus*
Elfin-woods, *Dendroica angelae*
Fan-tailed, *Euthlypis lachrymosa*
Golden-cheeked, *Dendroica chrysoparia*
Golden-crowned, *Basileuterus culicivorus*
Golden-winged, *Vermivora chrysoptera*
Grace's, *Dendroica graciae*
Hermit, *Dendroica occidentalis*
Hooded, *Wilsonia citrina*
Kentucky, *Oporornis formosus*
Kirtland's, *Dendroica kirtlandii*
Lanceolated, *Locustella lanceolata*
Lucy's, *Oreothlypis luciae*
MacGillivray's, *Oporornis tolmiei*
Magnolia, *Dendroica magnolia*
Mourning, *Oporornis philadelphia*
Nashville, *Oreothlypis ruficapilla*
Olive, *Peucedramus taeniatus*
Orange-crowned, *Oreothlypis celata*
Palm, *Dendroica palmarum*
Pine, *Dendroica pinus*
Prairie, *Dendroica discolor*
Prothonotary, *Protonotaria citrea*
Red-faced, *Cardellina rubrifrons*
Rufous-capped, *Basileuterus rufifrons*
Sedge, *Acrocephalus schoenobaenus*
Swainson's, *Limnothlypis swainsonii*
Tennessee, *Oreothlypis peregrina*
Townsend's, *Dendroica townsendi*
Virginia's, *Oreothlypis virginiae*
Willow, *Phylloscopus trochilus*
Wilson's, *Wilsonia pusilla*
Wood, *Phylloscopus sibilatrix*
Worm-eating, *Helmitheros vermivorum*
Yellow, *Dendroica petechia*
Yellow-browed, *Phylloscopus inornatus*
Yellow-rumped, *Dendroica coronata*
Yellow-throated, *Dendroica dominica*
WATERTHRUSH, Louisiana, *Parkesia motacilla*
Northern, *Parkesia noveboracensis*
WAXWING, Bohemian, *Bombycilla garrulus*
Cedar, *Bombycilla cedrorum*
WHEATEAR, Northern, *Oenanthe oenanthe*
WHIMBREL, *Numenius phaeopus*
WHIP-POOR-WILL, Eastern, *Caprimulgus vociferus*
Mexican, *Caprimulgus arizonae*
WHISTLING-DUCK, Black-bellied, *Dendrocygna autumnalis*
Fulvous, *Dendrocygna bicolor*
West Indian, *Dendrocygna arborea*
WHITETHROAT, Lesser, *Sylvia curruca*
WIGEON, American, *Anas americana*
Eurasian, *Anas penelope*
WILLET, *Tringa semipalmata*
WOOD-PEWEE, Eastern, *Contopus virens*
Western, *Contopus sordidulus*
WOODCOCK, American, *Scolopax minor*
Eurasian, *Scolopax rusticola*
WOODPECKER, Acorn, *Melanerpes formicivorus*
American Three-toed, *Picoides dorsalis*
Arizona, *Picoides arizonae*
Black-backed, *Picoides arcticus*
Downy, *Picoides pubescens*
Gila, *Melanerpes uropygialis*
Golden-fronted, *Melanerpes aurifrons*
Great Spotted, *Dendrocopos major*
Hairy, *Picoides villosus*
Ivory-billed, *Campephilus principalis*
Ladder-backed, *Picoides scalaris*
Lewis's, *Melanerpes lewis*
Nuttall's, *Picoides nuttallii*
Pileated, *Dryocopus pileatus*
Puerto Rican, *Melanerpes portoricensis*
Red-bellied, *Melanerpes carolinus*
Red-cockaded, *Picoides borealis*
Red-headed, *Melanerpes erythrocephalus*
White-headed, *Picoides albolarvatus*
WOODSTAR, Bahama, *Calliphlox evelynae*
WREN, Bewick's *Thryomanes bewickii*
Cactus, *Campylorhynchus brunneicapillus*
Canyon, *Catherpes mexicanus*
Carolina, *Thryothorus ludovicianus*
House, *Troglodytes aedon*
Marsh, *Cistothorus palustris*
Pacific, *Troglodytes pacificus*
Rock, *Salpinctes obsoletus*
Sedge, *Cistothorus platensis*
Sinaloa, *Thryothorus sinaloa*
Winter, *Troglodytes hiemalis*

WRENTIT, *Chamaea fasciata*
WRYNECK, Eurasian, *Jynx torquilla*
YELLOWLEGS, Greater, *Tringa melanoleuca*
Lesser, *Tringa flavipes*
YELLOWTHROAT, Common, *Geothlypis trichas*
Gray-crowned, *Geothlypis poliocephala*

(2) *Taxonomic listing.* Species are listed in phylogenetic sequence by scientific name, with the common (English) name following the scientific name. To help clarify species relationships, we also list the higher-level taxonomic categories of Order, Family, and Subfamily.

Order ANSERIFORMES
Family ANATIDAE
Subfamily DENDROCYGNINAE
Dendrocygna autumnalis, Black-bellied Whistling-Duck
Dendrocygna arborea, West Indian Whistling-Duck
Dendrocygna bicolor, Fulvous Whistling-Duck
Subfamily ANSERINAE
Anser fabalis, Taiga Bean-Goose
Anser serrirostris, Tundra Bean-Goose
Anser albifrons, Greater White-fronted Goose
Anser erythropus, Lesser White-fronted Goose
Chen canagica, Emperor Goose
Chen caerulescens, Snow Goose
Chen rossii, Ross's Goose
Branta bernicla, Brant
Branta leucopsis, Barnacle Goose
Branta canadensis, Canada Goose (including *Branta hutchinsii,* Cackling Goose)
Branta sandvicensis, Hawaiian Goose
Cygnus buccinator, Trumpeter Swan
Cygnus columbianus, Tundra Swan
Cygnus cygnus, Whooper Swan
Subfamily ANATINAE
Cairina moschata, Muscovy Duck
Aix sponsa, Wood Duck
Anas strepera, Gadwall
Anas falcata, Falcated Duck
Anas penelope, Eurasian Wigeon
Anas americana, American Wigeon
Anas rubripes, American Black Duck
Anas platyrhynchos, Mallard
Anas fulvigula, Mottled Duck
Anas wyvilliana, Hawaiian Duck
Anas laysanensis, Laysan Duck
Anas zonorhyncha, Eastern Spot-billed Duck
Anas superciliosa, Pacific Black Duck
Anas discors, Blue-winged Teal
Anas cyanoptera, Cinnamon Teal
Anas clypeata, Northern Shoveler
Anas bahamensis, White-cheeked Pintail
Anas acuta, Northern Pintail
Anas querquedula, Garganey
Anas formosa, Baikal Teal
Anas crecca, Green-winged Teal
Aythya valisineria, Canvasback
Aythya americana, Redhead
Aythya ferina, Common Pochard
Aythya baeri, Baer's Pochard
Aythya collaris, Ring-necked Duck
Aythya fuligula, Tufted Duck
Aythya marila, Greater Scaup
Aythya affinis, Lesser Scaup
Polysticta stelleri, Steller's Eider
Somateria fischeri, Spectacled Eider
Somateria spectabilis, King Eider
Somateria mollissima, Common Eider
Histrionicus histrionicus, Harlequin Duck
Melanitta perspicillata, Surf Scoter
Melanitta fusca, White-winged Scoter
Melanitta americana, Black Scoter
Clangula hyemalis, Long-tailed Duck
Bucephala albeola, Bufflehead
Bucephala clangula, Common Goldeneye
Bucephala islandica, Barrow's Goldeneye
Mergellus albellus, Smew
Lophodytes cucullatus, Hooded Merganser
Mergus merganser, Common Merganser
Mergus serrator, Red-breasted Merganser
Nomonyx dominicus, Masked Duck
Oxyura jamaicensis, Ruddy Duck
Order GAVIIFORMES
Family GAVIIDAE
Gavia stellata, Red-throated Loon
Gavia arctica, Arctic Loon
Gavia pacifica, Pacific Loon
Gavia immer, Common Loon
Gavia adamsii, Yellow-billed Loon
Order PODICIPEDIFORMES
Family PODICIPEDIDAE
Tachybaptus dominicus, Least Grebe
Podilymbus podiceps, Pied-billed Grebe
Podiceps auritus, Horned Grebe
Podiceps grisegena, Red-necked Grebe
Podiceps nigricollis, Eared Grebe
Aechmophorus occidentalis, Western Grebe
Aechmophorus clarkii, Clark's Grebe
Order PHOENICOPTERIFORMES
Family PHOENICOPTERIDAE
Phoenicopterus ruber, American Flamingo
Order PROCELLARIIFORMES
Family DIOMEDEIDAE
Thalassarche chlororhynchos, Yellow-nosed Albatross
Thalassarche cauta, Shy Albatross
Thalassarche melanophris, Black-browed Albatross
Phoebetria palpebrata, Light-mantled Albatross
Diomedea exulans, Wandering Albatross
Phoebastria immutabilis, Laysan Albatross
Phoebastria nigripes, Black-footed Albatross
Phoebastria albatrus, Short-tailed Albatross
Family PROCELLARIIDAE
Fulmarus glacialis, Northern Fulmar
Pterodroma macroptera, Great-winged Petrel
Pterodroma neglecta, Kermadec Petrel
Pterodroma arminjoniana, Herald Petrel
Pterodroma ultima, Murphy's Petrel
Pterodroma inexpectata, Mottled Petrel
Pterodroma cahow, Bermuda Petrel
Pterodroma hasitata, Black-capped Petrel
Pterodroma externa, Juan Fernandez Petrel
Pterodroma sandwichensis, Hawaiian Petrel
Pterodroma cervicalis, White-necked Petrel
Pterodroma hypoleuca, Bonin Petrel
Pterodroma nigripennis, Black-winged Petrel
Pterodroma cookii, Cook's Petrel
Pterodroma longirostris, Stejneger's Petrel
Pterodroma alba, Phoenix Petrel
Pterodroma leucoptera, Gould's Petrel
Pterodroma rostrata, Tahiti Petrel
Bulweria bulwerii, Bulwer's Petrel
Bulweria fallax, Jouanin's Petrel
Procellaria parkinsoni, Parkinson's Petrel
Calonectris leucomelas, Streaked Shearwater
Calonectris diomedea, Cory's Shearwater
Calonectris edwardsii, Cape Verde Shearwater
Puffinus creatopus, Pink-footed Shearwater
Puffinus carneipes, Flesh-footed Shearwater
Puffinus gravis, Great Shearwater
Puffinus pacificus, Wedge-tailed Shearwater
Puffinus bulleri, Buller's Shearwater
Puffinus griseus, Sooty Shearwater
Puffinus tenuirostris, Short-tailed Shearwater
Puffinus nativitatis, Christmas Shearwater
Puffinus puffinus, Manx Shearwater
Puffinus auricularis, Townsend's Shearwater
Puffinus opisthomelas, Black-vented Shearwater
Puffinus lherminieri, Audubon's Shearwater
Puffinus assimilis, Little Shearwater
Family HYDROBATIDAE
Oceanites oceanicus, Wilson's Storm-Petrel
Pelagodroma marina, White-faced Storm-Petrel
Fregetta tropica, Black-bellied Storm-Petrel

Fregetta grallaria, White-bellied Storm-Petrel
Nesofregetta fuliginosa, Polynesian Storm-Petrel
Oceanodroma furcata, Fork-tailed Storm-Petrel
Oceanodroma hornbyi, Ringed Storm-Petrel
Oceanodroma monorhis, Swinhoe's Storm-Petrel
Oceanodroma leucorhoa, Leach's Storm-Petrel
Oceanodroma homochroa, Ashy Storm-Petrel
Oceanodroma castro, Band-rumped Storm-Petrel
Oceanodroma tethys, Wedge-rumped Storm-Petrel
Oceanodroma matsudairae, Matsudaira's Storm-Petrel
Oceanodroma melania, Black Storm-Petrel
Oceanodroma tristrami, Tristram's Storm-Petrel
Oceanodroma microsoma, Least Storm-Petrel
Order PHAETHONTIFORMES
Family PHAETHONTIDAE
Phaethon lepturus, White-tailed Tropicbird
Phaethon aethereus, Red-billed Tropicbird
Phaethon rubricauda, Red-tailed Tropicbird
Order CICONIIFORMES
Family CICONIIDAE
Jabiru mycteria, Jabiru
Mycteria americana, Wood Stork
Order SULIFORMES
Family FREGATIDAE
Fregata magnificens, Magnificent Frigatebird
Fregata minor, Great Frigatebird
Fregata ariel, Lesser Frigatebird
Family SULIDAE
Sula dactylatra, Masked Booby
Sula nebouxii, Blue-footed Booby
Sula leucogaster, Brown Booby
Sula sula, Red-footed Booby
Morus bassanus, Northern Gannet
Family PHALACROCORACIDAE
Phalacrocorax penicillatus, Brandt's Cormorant
Phalacrocorax brasilianus, Neotropic Cormorant
Phalacrocorax auritus, Double-crested Cormorant
Phalacrocorax carbo, Great Cormorant
Phalacrocorax urile, Red-faced Cormorant
Phalacrocorax pelagicus, Pelagic Cormorant
Phalacrocorax melanoleucos, Little Pied Cormorant
Family ANHINGIDAE
Anhinga anhinga, Anhinga
Order PELECANIFORMES
Family PELECANIDAE
Pelecanus erythrorhynchos, American White Pelican
Pelecanus occidentalis, Brown Pelican
Family ARDEIDAE
Botaurus lentiginosus, American Bittern
Ixobrychus sinensis, Yellow Bittern
Ixobrychus exilis, Least Bittern
Ixobrychus eurhythmus, Schrenck's Bittern
Ixobrychus flavicollis, Black Bittern
Ardea herodias, Great Blue Heron
Ardea cinerea, Gray Heron
Ardea alba, Great Egret
Mesophoyx intermedia, Intermediate Egret
Egretta eulophotes, Chinese Egret
Egretta garzetta, Little Egret
Egretta sacra, Pacific Reef-Egret
Egretta gularis, Western Reef-Heron
Egretta thula, Snowy Egret
Egretta caerulea, Little Blue Heron
Egretta tricolor, Tricolored Heron
Egretta rufescens, Reddish Egret
Bubulcus ibis, Cattle Egret
Ardeola bacchus, Chinese Pond-Heron
Butorides virescens, Green Heron
Nycticorax nycticorax, Black-crowned Night-Heron
Nyctanassa violacea, Yellow-crowned Night-Heron
Gorsachius goisagi, Japanese Night-Heron
Gorsachius melanolophus, Malayan Night-Heron
Family THRESKIORNITHIDAE
Subfamily THRESKIORNITHINAE
Eudocimus albus, White Ibis
Eudocimus ruber, Scarlet Ibis
Plegadis falcinellus, Glossy Ibis
Plegadis chihi, White-faced Ibis
Subfamily PLATALEINAE
Platalea ajaja, Roseate Spoonbill
Order ACCIPITRIFORMES
Family CATHARTIDAE
Coragyps atratus, Black Vulture
Cathartes aura, Turkey Vulture
Gymnogyps californianus, California Condor
Family PANDIONIDAE
Pandion haliaetus, Osprey
Family ACCIPITRIDAE
Chondrohierax uncinatus, Hook-billed Kite
Elanoides forficatus, Swallow-tailed Kite
Elanus leucurus, White-tailed Kite
Rostrhamus sociabilis, Snail Kite
Ictinia mississippiensis, Mississippi Kite
Milvus migrans, Black Kite
Haliaeetus leucocephalus, Bald Eagle
Haliaeetus albicilla, White-tailed Eagle
Haliaeetus pelagicus, Steller's Sea-Eagle
Circus cyaneus, Northern Harrier
Accipiter soloensis, Gray Frog-Hawk
Accipiter gularis, Japanese Sparrowhawk
Accipiter striatus, Sharp-shinned Hawk
Accipiter cooperii, Cooper's Hawk
Accipiter gentilis, Northern Goshawk
Geranospiza caerulescens, Crane Hawk
Buteogallus anthracinus, Common Black-Hawk
Parabuteo unicinctus, Harris's Hawk
Buteo magnirostris, Roadside Hawk
Buteo lineatus, Red-shouldered Hawk
Buteo platypterus, Broad-winged Hawk
Buteo nitidus, Gray Hawk
Buteo brachyurus, Short-tailed Hawk
Buteo swainsoni, Swainson's Hawk
Buteo albicaudatus, White-tailed Hawk
Buteo albonotatus, Zone-tailed Hawk
Buteo solitarius, Hawaiian Hawk
Buteo jamaicensis, Red-tailed Hawk
Buteo regalis, Ferruginous Hawk
Buteo lagopus, Rough-legged Hawk
Aquila chrysaetos, Golden Eagle
Order FALCONIFORMES
Family FALCONIDAE
Subfamily MICRASTURINAE
Micrastur semitorquatus, Collared Forest-Falcon
Subfamily CARACARINAE
Caracara cheriway, Crested Caracara
Subfamily FALCONINAE
Falco tinnunculus, Eurasian Kestrel
Falco sparverius, American Kestrel
Falco vespertinus, Red-footed Falcon
Falco columbarius, Merlin
Falco subbuteo, Eurasian Hobby
Falco femoralis, Aplomado Falcon
Falco rusticolus, Gyrfalcon
Falco peregrinus, Peregrine Falcon
Falco mexicanus, Prairie Falcon
Order GRUIFORMES
Family RALLIDAE
Coturnicops noveboracensis, Yellow Rail
Laterallus jamaicensis, Black Rail
Gallirallus philippensis, Buff-banded Rail
Gallirallus owstoni, Guam Rail
Crex crex, Corn Crake
Rallus longirostris, Clapper Rail
Rallus elegans, King Rail
Rallus limicola, Virginia Rail
Porzana carolina, Sora
Porzana tabuensis, Spotless Crake
Porzana flaviventer, Yellow-breasted Crake
Neocrex erythrops, Paint-billed Crake
Pardirallus maculatus, Spotted Rail
Porphyrio porphyrio, Purple Swamphen
Porphyrio martinica, Purple Gallinule
Porphyrio flavirostris, Azure Gallinule
Gallinula chloropus, Common Moorhen
Fulica atra, Eurasian Coot
Fulica alai, Hawaiian Coot

Fulica americana, American Coot
Fulica caribaea, Caribbean Coot
Family ARAMIDAE
Aramus guarauna, Limpkin
Family GRUIDAE
Grus canadensis, Sandhill Crane
Grus grus, Common Crane
Grus americana, Whooping Crane
Order CHARADRIIFORMES
Family CHARADRIIDAE
Subfamily VANELLINAE
Vanellus vanellus, Northern Lapwing
Subfamily CHARADRIINAE
Pluvialis squatarola, Black-bellied Plover
Pluvialis apricaria, European Golden-Plover
Pluvialis dominica, American Golden-Plover
Pluvialis fulva, Pacific Golden-Plover
Charadrius mongolus, Lesser Sand-Plover
Charadrius leschenaultii, Greater Sand-Plover
Charadrius collaris, Collared Plover
Charadrius alexandrinus, Snowy Plover
Charadrius wilsonia, Wilson's Plover
Charadrius hiaticula, Common Ringed Plover
Charadrius semipalmatus, Semipalmated Plover
Charadrius melodus, Piping Plover
Charadrius dubius, Little Ringed Plover
Charadrius vociferus, Killdeer
Charadrius montanus, Mountain Plover
Charadrius morinellus, Eurasian Dotterel
Family HAEMATOPODIDAE
Haematopus ostralegus, Eurasian Oystercatcher
Haematopus palliatus, American Oystercatcher
Haematopus bachmani, Black Oystercatcher
Family RECURVIROSTRIDAE
Himantopus himantopus, Black-winged Stilt
Himantopus mexicanus, Black-necked Stilt
Recurvirostra americana, American Avocet
Family JACANIDAE
Jacana spinosa, Northern Jacana
Family SCOLOPACIDAE
Subfamily SCOLOPACINAE
Xenus cinereus, Terek Sandpiper
Actitis hypoleucos, Common Sandpiper
Actitis macularius, Spotted Sandpiper
Tringa ochropus, Green Sandpiper
Tringa solitaria, Solitary Sandpiper
Tringa brevipes, Gray-tailed Tattler
Tringa incana, Wandering Tattler
Tringa erythropus, Spotted Redshank
Tringa melanoleuca, Greater Yellowlegs
Tringa nebularia, Common Greenshank
Tringa guttifer, Nordmann's Greenshank
Tringa semipalmata, Willet
Tringa flavipes, Lesser Yellowlegs
Tringa stagnatilis, Marsh Sandpiper
Tringa glareola, Wood Sandpiper
Bartramia longicauda, Upland Sandpiper
Numenius minutus, Little Curlew
Numenius borealis, Eskimo Curlew
Numenius phaeopus, Whimbrel
Numenius tahitiensis, Bristle-thighed Curlew
Numenius madagascariensis, Far Eastern Curlew
Numenius arquata, Eurasian Curlew
Numenius americanus, Long-billed Curlew
Limosa limosa, Black-tailed Godwit
Limosa haemastica, Hudsonian Godwit
Limosa lapponica, Bar-tailed Godwit
Limosa fedoa, Marbled Godwit
Arenaria interpres, Ruddy Turnstone
Arenaria melanocephala, Black Turnstone
Aphriza virgata, Surfbird
Calidris tenuirostris, Great Knot
Calidris canutus, Red Knot
Calidris alba, Sanderling
Calidris pusilla, Semipalmated Sandpiper
Calidris mauri, Western Sandpiper
Calidris ruficollis, Red-necked Stint
Calidris minuta, Little Stint
Calidris temminckii, Temminck's Stint
Calidris subminuta, Long-toed Stint
Calidris minutilla, Least Sandpiper
Calidris fuscicollis, White-rumped Sandpiper
Calidris bairdii, Baird's Sandpiper
Calidris melanotos, Pectoral Sandpiper
Calidris acuminata, Sharp-tailed Sandpiper
Calidris maritima, Purple Sandpiper
Calidris ptilocnemis, Rock Sandpiper
Calidris alpina, Dunlin
Calidris ferruginea, Curlew Sandpiper
Calidris himantopus, Stilt Sandpiper
Eurynorhynchus pygmeus, Spoon-billed Sandpiper
Limicola falcinellus, Broad-billed Sandpiper
Tryngites subruficollis, Buff-breasted Sandpiper
Philomachus pugnax, Ruff
Limnodromus griseus, Short-billed Dowitcher
Limnodromus scolopaceus, Long-billed Dowitcher
Lymnocryptes minimus, Jack Snipe
Gallinago delicata, Wilson's Snipe
Gallinago gallinago, Common Snipe
Gallinago stenura, Pin-tailed Snipe
Gallinago megala, Swinhoe's Snipe
Scolopax rusticola, Eurasian Woodcock
Scolopax minor, American Woodcock
Subfamily PHALAROPODINAE
Phalaropus tricolor, Wilson's Phalarope
Phalaropus lobatus, Red-necked Phalarope
Phalaropus fulicarius, Red Phalarope
Family LARIDAE
Subfamily LARINAE
Creagrus furcatus, Swallow-tailed Gull
Rissa tridactyla, Black-legged Kittiwake
Rissa brevirostris, Red-legged Kittiwake
Pagophila eburnea, Ivory Gull
Xema sabini, Sabine's Gull
Chroicocephalus philadelphia, Bonaparte's Gull
Chroicocephalus cirrocephalus, Gray-hooded Gull
Chroicocephalus ridibundus, Black-headed Gull
Hydrocoloeus minutus, Little Gull
Rhodostethia rosea, Ross's Gull
Leucophaeus atricilla, Laughing Gull
Leucophaeus pipixcan, Franklin's Gull
Larus belcheri, Belcher's Gull
Larus crassirostris, Black-tailed Gull
Larus heermanni, Heermann's Gull
Larus canus, Mew Gull
Larus delawarensis, Ring-billed Gull
Larus occidentalis, Western Gull
Larus livens, Yellow-footed Gull
Larus californicus, California Gull
Larus argentatus, Herring Gull
Larus michahellis, Yellow-legged Gull
Larus thayeri, Thayer's Gull
Larus glaucoides, Iceland Gull
Larus fuscus, Lesser Black-backed Gull
Larus schistisagus, Slaty-backed Gull
Larus glaucescens, Glaucous-winged Gull
Larus hyperboreus, Glaucous Gull
Larus marinus, Great Black-backed Gull
Larus dominicanus, Kelp Gull
Subfamily STERNINAE
Anous stolidus, Brown Noddy
Anous minutus, Black Noddy
Procelsterna cerulea, Blue-gray Noddy
Gygis alba, White Tern
Onychoprion fuscatus, Sooty Tern
Onychoprion lunatus, Gray-backed Tern
Onychoprion anaethetus, Bridled Tern
Onychoprion aleuticus, Aleutian Tern
Sternula albifrons, Little Tern
Sternula antillarum, Least Tern
Phaetusa simplex, Large-billed Tern
Gelochelidon nilotica, Gull-billed Tern
Hydroprogne caspia, Caspian Tern

Chlidonias niger, Black Tern
Chlidonias leucopterus, White-winged Tern
Chlidonias hybridus, Whiskered Tern
Sterna dougallii, Roseate Tern
Sterna sumatrana, Black-naped Tern
Sterna hirundo, Common Tern
Sterna paradisaea, Arctic Tern
Sterna forsteri, Forster's Tern
Thalasseus maximus, Royal Tern
Thalasseus bergii, Great Crested Tern
Thalasseus sandvicensis, Sandwich Tern
Thalasseus elegans, Elegant Tern
Subfamily RYNCHOPINAE
Rynchops niger, Black Skimmer
Family STERCORARIIDAE
Stercorarius skua, Great Skua
Stercorarius maccormicki, South Polar Skua
Stercorarius pomarinus, Pomarine Jaeger
Stercorarius parasiticus, Parasitic Jaeger
Stercorarius longicaudus, Long-tailed Jaeger
Family ALCIDAE
Alle alle, Dovekie
Uria aalge, Common Murre
Uria lomvia, Thick-billed Murre
Alca torda, Razorbill
Cepphus grylle, Black Guillemot
Cepphus columba, Pigeon Guillemot
Brachyramphus perdix, Long-billed Murrelet
Brachyramphus marmoratus, Marbled Murrelet
Brachyramphus brevirostris, Kittlitz's Murrelet
Synthliboramphus hypoleucus, Xantus's Murrelet
Synthliboramphus craveri, Craveri's Murrelet
Synthliboramphus antiquus, Ancient Murrelet
Ptychoramphus aleuticus, Cassin's Auklet
Aethia psittacula, Parakeet Auklet
Aethia pusilla, Least Auklet
Aethia pygmaea, Whiskered Auklet
Aethia cristatella, Crested Auklet
Cerorhinca monocerata, Rhinoceros Auklet
Fratercula arctica, Atlantic Puffin
Fratercula corniculata, Horned Puffin
Fratercula cirrhata, Tufted Puffin
Order COLUMBIFORMES
Family COLUMBIDAE
Patagioenas squamosa, Scaly-naped Pigeon
Patagioenas leucocephala, White-crowned Pigeon
Patagioenas flavirostris, Red-billed Pigeon
Patagioenas inornata, Plain Pigeon
Patagioenas fasciata, Band-tailed Pigeon
Streptopelia orientalis, Oriental Turtle-Dove
Zenaida asiatica, White-winged Dove
Zenaida aurita, Zenaida Dove
Zenaida macroura, Mourning Dove
Columbina inca, Inca Dove
Columbina passerina, Common Ground-Dove
Columbina talpacoti, Ruddy Ground-Dove
Leptotila verreauxi, White-tipped Dove
Geotrygon chrysia, Key West Quail-Dove
Geotrygon mystacea, Bridled Quail-Dove
Geotrygon montana, Ruddy Quail-Dove
Gallicolumba xanthonura, White-throated Ground-Dove
Gallicolumba stairi, Friendly Ground-Dove
Ptilinopus perousii, Many-colored Fruit-Dove
Ptilinopus porphyraceus, Crimson-crowned Fruit-Dove
Ptilinopus roseicapilla, Mariana Fruit-Dove
Ducula pacifica, Pacific Imperial-Pigeon
Order CUCULIFORMES
Family CUCULIDAE
Subfamily CUCULINAE
Cuculus fugax, Hodgson's Hawk-Cuckoo
Cuculus canorus, Common Cuckoo
Cuculus optatus, Oriental Cuckoo
Coccyzus americanus, Yellow-billed Cuckoo
Coccyzus minor, Mangrove Cuckoo
Coccyzus erythropthalmus, Black-billed Cuckoo
Coccyzus vieilloti, Puerto Rican Lizard-Cuckoo
Subfamily NEOMORPHINAE
Geococcyx californianus, Greater Roadrunner
Subfamily CROTOPHAGINAE
Crotophaga ani, Smooth-billed Ani
Crotophaga sulcirostris, Groove-billed Ani
Order STRIGIFORMES
Family TYTONIDAE
Tyto alba, Barn Owl
Family STRIGIDAE
Otus flammeolus, Flammulated Owl
Otus sunia, Oriental Scops-Owl
Megascops kennicottii, Western Screech-Owl
Megascops asio, Eastern Screech-Owl
Megascops trichopsis, Whiskered Screech-Owl
Megascops nudipes, Puerto Rican Screech-Owl
Bubo virginianus, Great Horned Owl
Bubo scandiacus, Snowy Owl
Surnia ulula, Northern Hawk Owl
Glaucidium gnoma, Northern Pygmy-Owl
Glaucidium brasilianum, Ferruginous Pygmy-Owl
Micrathene whitneyi, Elf Owl
Athene cunicularia, Burrowing Owl
Ciccaba virgata, Mottled Owl
Strix occidentalis, Spotted Owl
Strix varia, Barred Owl
Strix nebulosa, Great Gray Owl
Asio otus, Long-eared Owl
Asio stygius, Stygian Owl
Asio flammeus, Short-eared Owl
Aegolius funereus, Boreal Owl
Aegolius acadicus, Northern Saw-whet Owl
Ninox scutulata, Brown Hawk-Owl
Order CAPRIMULGIFORMES
Family CAPRIMULGIDAE
Subfamily CHORDEILINAE
Chordeiles acutipennis, Lesser Nighthawk
Chordeiles minor, Common Nighthawk
Chordeiles gundlachii, Antillean Nighthawk
Subfamily CAPRIMULGINAE
Nyctidromus albicollis, Common Pauraque
Phalaenoptilus nuttallii, Common Poorwill
Caprimulgus carolinensis, Chuck-will's-widow
Caprimulgus ridgwayi, Buff-collared Nightjar
Caprimulgus vociferus, Eastern Whip-poor-will
Caprimulgus arizonae, Mexican Whip-poor-will
Caprimulgus noctitherus, Puerto Rican Nightjar
Caprimulgus indicus, Gray Nightjar
Order APODIFORMES
Family APODIDAE
Subfamily CYPSELOIDINAE
Cypseloides niger, Black Swift
Streptoprocne zonaris, White-collared Swift
Subfamily CHAETURINAE
Chaetura pelagica, Chimney Swift
Chaetura vauxi, Vaux's Swift
Chaetura brachyura, Short-tailed Swift
Hirundapus caudacutus, White-throated Needletail
Aerodramus spodiopygius, White-rumped Swiftlet
Aerodramus bartschi, Mariana Swiftlet
Subfamily APODINAE
Apus apus, Common Swift
Apus pacificus, Fork-tailed Swift
Apus melba, Alpine Swift
Aeronautes saxatalis, White-throated Swift
Tachornis phoenicobia, Antillean Palm-Swift
Family TROCHILIDAE
Subfamily TROCHILINAE
Colibri thalassinus, Green Violetear
Anthracothorax prevostii, Green-breasted Mango
Anthracothorax dominicus, Antillean

Mango
Anthracothorax viridis, Green Mango
Eulampis jugularis, Purple-throated Carib
Eulampis holosericeus, Green-throated Carib
Orthorhyncus cristatus, Antillean Crested Hummingbird
Chlorostilbon maugaeus, Puerto Rican Emerald
Cynanthus latirostris, Broad-billed Hummingbird
Hylocharis leucotis, White-eared Hummingbird
Hylocharis xantusii, Xantus's Hummingbird
Amazilia beryllina, Berylline Hummingbird
Amazilia yucatanensis, Buff-bellied Hummingbird
Amazilia rutila, Cinnamon Hummingbird
Amazilia violiceps, Violet-crowned Hummingbird
Lampornis clemenciae, Blue-throated Hummingbird
Eugenes fulgens, Magnificent Hummingbird
Heliomaster constantii, Plain-capped Starthroat
Calliphlox evelynae, Bahama Woodstar
Calothorax lucifer, Lucifer Hummingbird
Archilochus colubris, Ruby-throated Hummingbird
Archilochus alexandri, Black-chinned Hummingbird
Calypte anna, Anna's Hummingbird
Calypte costae, Costa's Hummingbird
Stellula calliope, Calliope Hummingbird
Atthis heloisa, Bumblebee Hummingbird
Selasphorus platycercus, Broad-tailed Hummingbird
Selasphorus rufus, Rufous Hummingbird
Selasphorus sasin, Allen's Hummingbird
Order TROGONIFORMES
Family TROGONIDAE
Subfamily TROGONINAE
Trogon elegans, Elegant Trogon
Euptilotis neoxenus, Eared Quetzel
Order UPUPIFORMES
Family UPUPIDAE
Upupa epops, Eurasian Hoopoe
Order CORACIIFORMES
Family ALCEDINIDAE
Subfamily HALCYONINAE
Todirhamphus cinnamominus, Micronesian Kingfisher
Todirhamphus chloris, Collared Kingfisher
Subfamily CERYLINAE
Megaceryle torquata, Ringed Kingfisher
Megaceryle alcyon, Belted Kingfisher
Chloroceryle americana, Green Kingfisher
Order PICIFORMES
Family PICIDAE
Subfamily JYNGINAE
Jynx torquilla, Eurasian Wryneck
Subfamily PICINAE
Melanerpes lewis, Lewis's Woodpecker
Melanerpes portoricensis, Puerto Rican Woodpecker
Melanerpes erythrocephalus, Red-headed Woodpecker
Melanerpes formicivorus, Acorn Woodpecker
Melanerpes uropygialis, Gila Woodpecker
Melanerpes aurifrons, Golden-fronted Woodpecker
Melanerpes carolinus, Red-bellied Woodpecker
Sphyrapicus thyroideus, Williamson's Sapsucker
Sphyrapicus varius, Yellow-bellied Sapsucker
Sphyrapicus nuchalis, Red-naped Sapsucker
Sphyrapicus ruber, Red-breasted Sapsucker
Dendrocopos major, Great Spotted Woodpecker
Picoides scalaris, Ladder-backed Woodpecker
Picoides nuttallii, Nuttall's Woodpecker
Picoides pubescens, Downy Woodpecker
Picoides villosus, Hairy Woodpecker
Picoides arizonae, Arizona Woodpecker
Picoides borealis, Red-cockaded Woodpecker
Picoides albolarvatus, White-headed Woodpecker
Picoides dorsalis, American Three-toed Woodpecker
Picoides arcticus, Black-backed Woodpecker
Colaptes auratus, Northern Flicker
Colaptes chrysoides, Gilded Flicker
Dryocopus pileatus, Pileated Woodpecker
Campephilus principalis, Ivory-billed Woodpecker
Order PASSERIFORMES
Family TYRANNIDAE
Subfamily ELAENIINAE
Camptostoma imberbe, Northern Beardless-Tyrannulet
Myiopagis viridicata, Greenish Elaenia
Elaenia martinica, Caribbean Elaenia
Elaenia albiceps, White-crested Eleania
Subfamily FLUVICOLINAE
Mitrephanes phaeocercus, Tufted Flycatcher
Contopus cooperi, Olive-sided Flycatcher
Contopus pertinax, Greater Pewee
Contopus sordidulus, Western Wood-Pewee
Contopus virens, Eastern Wood-Pewee
Contopus caribaeus, Cuban Pewee
Contopus hispaniolensis, Hispaniolan Pewee
Contopus latirostris, Lesser Antillean Pewee
Empidonax flaviventris, Yellow-bellied Flycatcher
Empidonax virescens, Acadian Flycatcher
Empidonax alnorum, Alder Flycatcher
Empidonax traillii, Willow Flycatcher
Empidonax minimus, Least Flycatcher
Empidonax hammondii, Hammond's Flycatcher
Empidonax wrightii, Gray Flycatcher
Empidonax oberholseri, Dusky Flycatcher
Empidonax difficilis, Pacific-slope Flycatcher
Empidonax occidentalis, Cordilleran Flycatcher
Empidonax fulvifrons, Buff-breasted Flycatcher
Sayornis nigricans, Black Phoebe
Sayornis phoebe, Eastern Phoebe
Sayornis saya, Say's Phoebe
Pyrocephalus rubinus, Vermilion Flycatcher
Subfamily TYRANNINAE
Myiarchus tuberculifer, Dusky-capped Flycatcher
Myiarchus cinerascens, Ash-throated Flycatcher
Myiarchus nuttingi, Nutting's Flycatcher
Myiarchus crinitus, Great Crested Flycatcher
Myiarchus tyrannulus, Brown-crested Flycatcher
Myiarchus sagrae, La Sagra's Flycatcher
Myiarchus antillarum, Puerto Rican Flycatcher
Pitangus sulphuratus, Great Kiskadee
Myiozetetes similis, Social Flycatcher
Myiodynastes luteiventris, Sulphur-bellied Flycatcher
Legatus leucophalus, Piratic Flycatcher
Empidonomus varius, Variegated Flycatcher
Empidonomus aurantioatrocristatus, Crowned Slaty Flycatcher
Tyrannus melancholicus, Tropical Kingbird
Tyrannus couchii, Couch's Kingbird
Tyrannus vociferans, Cassin's Kingbird
Tyrannus crassirostris, Thick-billed Kingbird
Tyrannus verticalis, Western Kingbird
Tyrannus tyrannus, Eastern Kingbird
Tyrannus dominicensis, Gray

Kingbird
Tyrannus caudifasciatus, Loggerhead Kingbird
Tyrannus forficatus, Scissor-tailed Flycatcher
Tyrannus savana, Fork-tailed Flycatcher
Pachyramphus aglaiae, Rose-throated Becard
Tityra semifasciata, Masked Tityra
Family LANIIDAE
Lanius cristatus, Brown Shrike
Lanius ludovicianus, Loggerhead Shrike
Lanius excubitor, Northern Shrike
Family VIREONIDAE
Vireo griseus, White-eyed Vireo
Vireo crassirostris, Thick-billed Vireo
Vireo latimeri, Puerto Rican Vireo
Vireo bellii, Bell's Vireo
Vireo atricapillus, Black-capped Vireo
Vireo vicinior, Gray Vireo
Vireo flavifrons, Yellow-throated Vireo
Vireo plumbeus, Plumbeous Vireo
Vireo cassinii, Cassin's Vireo
Vireo solitarius, Blue-headed Vireo
Vireo huttoni, Hutton's Vireo
Vireo gilvus, Warbling Vireo
Vireo philadelphicus, Philadelphia Vireo
Vireo olivaceus, Red-eyed Vireo
Vireo flavoviridis, Yellow-green Vireo
Vireo altiloquus, Black-whiskered Vireo
Vireo magister, Yucatan Vireo
Family CORVIDAE
Perisoreus canadensis, Gray Jay
Psilorhinus morio, Brown Jay
Cyanocorax yncas, Green Jay
Gymnorhinus cyanocephalus, Pinyon Jay
Cyanocitta stelleri, Steller's Jay
Cyanocitta cristata, Blue Jay
Aphelocoma coerulescens, Florida Scrub-Jay
Aphelocoma insularis, Island Scrub-Jay
Aphelocoma californica, Western Scrub-Jay
Aphelocoma ultramarina, Mexican Jay
Nucifraga columbiana, Clark's Nutcracker
Pica hudsonia, Black-billed Magpie
Pica nuttalli, Yellow-billed Magpie
Corvus kubaryi, Mariana Crow
Corvus brachyrhynchos, American Crow
Corvus caurinus, Northwestern Crow
Corvus leucognaphalus, White-necked Crow
Corvus imparatus, Tamaulipas Crow
Corvus ossifragus, Fish Crow
Corvus hawaiiensis, Hawaiian Crow
Corvus cryptoleucus, Chihuahuan Raven
Corvus corax, Common Raven
Family ALAUDIDAE
Alauda arvensis, Sky Lark
Eremophila alpestris, Horned Lark
Family HIRUNDINIDAE
Subfamily HIRUNDININAE
Progne subis, Purple Martin
Progne cryptoleuca, Cuban Martin
Progne dominicensis, Caribbean Martin
Progne chalybea, Gray-breasted Martin
Progne elegans, Southern Martin
Progne tapera, Brown-chested Martin
Tachycineta bicolor, Tree Swallow
Tachycineta albilinea, Mangrove Swallow
Tachycineta thalassina, Violet-green Swallow
Tachycineta cyaneoviridis, Bahama Swallow
Stelgidopteryx serripennis, Northern Rough-winged Swallow
Riparia riparia, Bank Swallow
Petrochelidon pyrrhonota, Cliff Swallow
Petrochelidon fulva, Cave Swallow
Hirundo rustica, Barn Swallow
Delichon urbicum, Common House-Martin
Family PARIDAE
Poecile carolinensis, Carolina Chickadee
Poecile atricapillus, Black-capped Chickadee
Poecile gambeli, Mountain Chickadee
Poecile sclateri, Mexican Chickadee
Poecile rufescens, Chestnut-backed Chickadee
Poecile hudsonicus, Boreal Chickadee
Poecile cinctus, Gray-headed Chickadee
Baeolophus wollweberi, Bridled Titmouse
Baeolophus inornatus, Oak Titmouse
Baeolophus ridgwayi, Juniper Titmouse
Baeolophus bicolor, Tufted Titmouse
Baeolophus atricristatus, Black-crested Titmouse
Family REMIZIDAE
Auriparus flaviceps, Verdin
Family AEGITHALIDAE
Psaltriparus minimus, Bushtit
Family SITTIDAE
Subfamily SITTINAE
Sitta canadensis, Red-breasted Nuthatch
Sitta carolinensis, White-breasted Nuthatch
Sitta pygmaea, Pygmy Nuthatch
Sitta pusilla, Brown-headed Nuthatch
Family CERTHIIDAE
Subfamily CERTHIINAE
Certhia americana, Brown Creeper
Family TROGLODYTIDAE
Campylorhynchus brunneicapillus, Cactus Wren
Salpinctes obsoletus, Rock Wren
Catherpes mexicanus, Canyon Wren
Thryothorus sinaloa, Sinaloa Wren
Thryothorus ludovicianus, Carolina Wren
Thryomanes bewickii, Bewick's Wren
Troglodytes aedon, House Wren
Troglodytes pacificus, Pacific Wren
Troglodytes hiemalis, Winter Wren
Cistothorus platensis, Sedge Wren
Cistothorus palustris, Marsh Wren
Family POLIOPTILIDAE
Polioptila caerulea, Blue-gray Gnatcatcher
Polioptila californica, California Gnatcatcher
Polioptila melanura, Black-tailed Gnatcatcher
Polioptila nigriceps, Black-capped Gnatcatcher
Family CINCLIDAE
Cinclus mexicanus, American Dipper
Family REGULIDAE
Regulus satrapa, Golden-crowned Kinglet
Regulus calendula, Ruby-crowned Kinglet
Family PHYLLOSCOPIDAE
Phylloscopus trochilus, Willow Warbler
Phylloscopus sibilatrix, Wood Warbler
Phylloscopus fuscatus, Dusky Warbler
Phylloscopus proregulus, Pallas's Leaf-Warbler
Phylloscopus inornatus, Yellow-browed Warbler
Phylloscopus borealis, Arctic Warbler
Family SYLVIIDAE
Sylvia curruca, Lesser Whitethroat
Chamaea fasciata, Wrentit
Family ACROCEPHALIDAE
Acrocephalus luscinia, Nightingale Reed-Warbler
Acrocephalus familiaris, Millerbird
Acrocephalus schoenobaenus, Sedge Warbler
Family MEGALURIDAE
Locustella ochotensis, Middendorff's Grasshopper-Warbler
Locustella lanceolata, Lanceolated Warbler
Family MUSCICAPIDAE
Ficedula narcissina, Narcissus Flycatcher
Ficedula mugimaki, Mugimaki Flycatcher
Ficedula albicilla, Taiga Flycatcher
Muscicapa sibirica, Dark-sided Flycatcher
Muscicapa griseisticta, Gray-streaked Flycatcher
Muscicapa dauurica, Asian Brown Flycatcher
Muscicapa striata, Spotted Flycatcher
Family TURDIDAE
Monticola solitarius, Blue Rock-Thrush
Luscinia sibilans, Rufous-tailed Robin
Luscinia calliope, Siberian Rubythroat
Luscinia svecica, Bluethroat
Luscinia cyane, Siberian Blue Robin

Tarsiger cyanurus, Red-flanked Bluetail
Oenanthe oenanthe, Northern Wheatear
Saxicola torquatus, Stonechat
Sialia sialis, Eastern Bluebird
Sialia mexicana, Western Bluebird
Sialia currucoides, Mountain Bluebird
Myadestes townsendi, Townsend's Solitaire
Myadestes myadestinus, Kamao
Myadestes lanaiensis, Olomao
Myadestes obscurus, Omao
Myadestes palmeri, Puaiohi
Catharus aurantiirostris, Orange-billed Nightingale-Thrush
Catharus mexicanus, Black-headed Nightingale-Thrush
Catharus fuscescens, Veery
Catharus minimus, Gray-cheeked Thrush
Catharus bicknelli, Bicknell's Thrush
Catharus ustulatus, Swainson's Thrush
Catharus guttatus, Hermit Thrush
Hylocichla mustelina, Wood Thrush
Turdus obscurus, Eyebrowed Thrush
Turdus naumanni, Dusky Thrush
Turdus pilaris, Fieldfare
Turdus grayi, Clay-colored Thrush
Turdus assimilis, White-throated Thrush
Turdus rufopalliatus, Rufous-backed Robin
Turdus migratorius, American Robin
Turdus plumbeus, Red-legged Thrush
Ixoreus naevius, Varied Thrush
Ridgwayia pinicola, Aztec Thrush

Family MIMIDAE
Dumetella carolinensis, Gray Catbird
Melanoptila glabrirostris, Black Catbird
Mimus polyglottos, Northern Mockingbird
Mimus gundlachii, Bahama Mockingbird
Oreoscoptes montanus, Sage Thrasher
Toxostoma rufum, Brown Thrasher
Toxostoma longirostre, Long-billed Thrasher
Toxostoma bendirei, Bendire's Thrasher
Toxostoma curvirostre, Curve-billed Thrasher
Toxostoma redivivum, California Thrasher
Toxostoma crissale, Crissal Thrasher
Toxostoma lecontei, Le Conte's Thrasher
Melanotis caerulescens, Blue Mockingbird
Margarops fuscatus, Pearly-eyed Thrasher

Family STURNIDAE
Sturnus philippensis, Chestnut-cheeked Starling
Sturnus cineraceus, White-cheeked Starling

Family PRUNELLIDAE
Prunella montanella, Siberian Accentor

Family MOTACILLIDAE
Motacilla tschutschensis, Eastern Yellow Wagtail
Motacilla citreola, Citrine Wagtail
Motacilla cinerea, Gray Wagtail
Motacilla alba, White Wagtail
Anthus trivialis, Tree Pipit
Anthus hodgsoni, Olive-backed Pipit
Anthus gustavi, Pechora Pipit
Anthus cervinus, Red-throated Pipit
Anthus rubescens, American Pipit
Anthus spragueii, Sprague's Pipit

Family BOMBYCILLIDAE
Bombycilla garrulus, Bohemian Waxwing
Bombycilla cedrorum, Cedar Waxwing

Family PTILOGONATIDAE
Ptilogonys cinereus, Gray Silky-flycatcher
Phainopepla nitens, Phainopepla

Family PEUCEDRAMIDAE
Peucedramus taeniatus, Olive Warbler

Family CALCARIIDAE
Calcarius lapponicus, Lapland Longspur
Calcarius ornatus, Chestnut-collared Longspur
Calcarius pictus, Smith's Longspur
Rhynchophanes mccownii, McCown's Longspur
Plectrophenax nivalis, Snow Bunting
Plectrophenax hyperboreus, McKay's Bunting

Family PARULIDAE
Vermivora bachmanii, Bachman's Warbler
Vermivora cyanoptera, Blue-winged Warbler
Vermivora chrysoptera, Golden-winged Warbler
Oreothlypis peregrina, Tennessee Warbler
Oreothlypis celata, Orange-crowned Warbler
Oreothlypis ruficapilla, Nashville Warbler
Oreothlypis virginiae, Virginia's Warbler
Oreothlypis crissalis, Colima Warbler
Oreothlypis luciae, Lucy's Warbler
Oreothlypis superciliosa, Crescent-chested Warbler
Parula americana, Northern Parula
Parula pitiayumi, Tropical Parula
Dendroica petechia, Yellow Warbler
Dendroica pensylvanica, Chestnut-sided Warbler
Dendroica magnolia, Magnolia Warbler
Dendroica tigrina, Cape May Warbler
Dendroica caerulescens, Black-throated Blue Warbler
Dendroica coronata, Yellow-rumped Warbler
Dendroica nigrescens, Black-throated Gray Warbler
Dendroica chrysoparia, Golden-cheeked Warbler
Dendroica virens, Black-throated Green Warbler
Dendroica townsendi, Townsend's Warbler
Dendroica occidentalis, Hermit Warbler
Dendroica fusca, Blackburnian Warbler
Dendroica dominica, Yellow-throated Warbler
Dendroica graciae, Grace's Warbler
Dendroica adelaidae, Adelaide's Warbler
Dendroica pinus, Pine Warbler
Dendroica kirtlandii, Kirtland's Warbler
Dendroica discolor, Prairie Warbler
Dendroica palmarum, Palm Warbler
Dendroica castanea, Bay-breasted Warbler
Dendroica striata, Blackpoll Warbler
Dendroica cerulea, Cerulean Warbler
Dendroica angelae, Elfin-woods Warbler
Mniotilta varia, Black-and-white Warbler
Setophaga ruticilla, American Redstart
Protonotaria citrea, Prothonotary Warbler
Helmitheros vermivorum, Worm-eating Warbler
Limnothlypis swainsonii, Swainson's Warbler
Seiurus aurocapilla, Ovenbird
Parkesia noveboracensis, Northern Waterthrush
Parkesia motacilla, Louisiana Waterthrush
Oporornis formosus, Kentucky Warbler
Oporornis agilis, Connecticut Warbler
Oporornis philadelphia, Mourning Warbler
Oporornis tolmiei, MacGillivray's Warbler
Geothlypis trichas, Common Yellowthroat
Geothlypis poliocephala, Gray-crowned Yellowthroat
Wilsonia citrina, Hooded Warbler
Wilsonia pusilla, Wilson's Warbler
Wilsonia canadensis, Canada Warbler
Cardellina rubrifrons, Red-faced Warbler
Myioborus pictus, Painted Redstart
Myioborus miniatus, Slate-throated Redstart
Euthlypis lachrymosa, Fan-tailed Warbler
Basileuterus culicivorus, Golden-crowned Warbler
Basileuterus rufifrons, Rufous-capped Warbler
Icteria virens, Yellow-breasted Chat

Family THRAUPIDAE
Nesospingus speculiferus, Puerto Rican Tanager
Spindalis zena, Western Spindalis
Spindalis portoricensis, Puerto Rican Spindalis
Family EMBERIZIDAE
Sporophila torqueola, White-collared Seedeater
Tiaris olivaceus, Yellow-faced Grassquit
Tiaris bicolor, Black-faced Grassquit
Loxigilla portoricensis, Puerto Rican Bullfinch
Arremonops rufivirgatus, Olive Sparrow
Pipilo chlorurus, Green-tailed Towhee
Pipilo maculatus, Spotted Towhee
Pipilo erythrophthalmus, Eastern Towhee
Aimophila ruficeps, Rufous-crowned Sparrow
Melozone fusca, Canyon Towhee
Melozone crissalis, California Towhee
Melozone aberti, Abert's Towhee
Peucaea carpalis, Rufous-winged Sparrow
Peucaea botterii, Botteri's Sparrow
Peucaea cassinii, Cassin's Sparrow
Peucaea aestivalis, Bachman's Sparrow
Spizella arborea, American Tree Sparrow
Spizella passerina, Chipping Sparrow
Spizella pallida, Clay-colored Sparrow
Spizella breweri, Brewer's Sparrow
Spizella pusilla, Field Sparrow
Spizella wortheni, Worthen's Sparrow
Spizella atrogularis, Black-chinned Sparrow
Pooecetes gramineus, Vesper Sparrow
Chondestes grammacus, Lark Sparrow
Amphispiza quinquestriata, Five-striped Sparrow
Amphispiza bilineata, Black-throated Sparrow
Amphispiza belli, Sage Sparrow
Calamospiza melanocorys, Lark Bunting
Passerculus sandwichensis, Savannah Sparrow
Ammodramus savannarum, Grasshopper Sparrow
Ammodramus bairdii, Baird's Sparrow
Ammodramus henslowii, Henslow's Sparrow
Ammodramus leconteii, Le Conte's Sparrow
Ammodramus nelsoni, Nelson's Sparrow
Ammodramus caudacutus, Saltmarsh Sparrow
Ammodramus maritimus, Seaside Sparrow
Passerella iliaca, Fox Sparrow
Melospiza melodia, Song Sparrow
Melospiza lincolnii, Lincoln's Sparrow
Melospiza georgiana, Swamp Sparrow
Zonotrichia albicollis, White-throated Sparrow
Zonotrichia querula, Harris's Sparrow
Zonotrichia leucophrys, White-crowned Sparrow
Zonotrichia atricapilla, Golden-crowned Sparrow
Junco hyemalis, Dark-eyed Junco
Junco phaeonotus, Yellow-eyed Junco
Emberiza leucocephalos, Pine Bunting
Emberiza chrysophrys, Yellow-browed Bunting
Emberiza pusilla, Little Bunting
Emberiza rustica, Rustic Bunting
Emberiza elegans, Yellow-throated Bunting
Emberiza aureola, Yellow-breasted Bunting
Emberiza variabilis, Gray Bunting
Emberiza pallasi, Pallas's Bunting
Emberiza schoeniclus, Reed Bunting
Family CARDINALIDAE
Piranga flava, Hepatic Tanager
Piranga rubra, Summer Tanager
Piranga olivacea, Scarlet Tanager
Piranga ludoviciana, Western Tanager
Piranga bidentata, Flame-colored Tanager
Rhodothraupis celaeno, Crimson-collared Grosbeak
Cardinalis cardinalis, Northern Cardinal
Cardinalis sinuatus, Pyrrhuloxia
Pheucticus chrysopeplus, Yellow Grosbeak
Pheucticus ludovicianus, Rose-breasted Grosbeak
Pheucticus melanocephalus, Black-headed Grosbeak
Cyanocompsa parellina, Blue Bunting
Passerina caerulea, Blue Grosbeak
Passerina amoena, Lazuli Bunting
Passerina cyanea, Indigo Bunting
Passerina versicolor, Varied Bunting
Passerina ciris, Painted Bunting
Spiza americana, Dickcissel
Family ICTERIDAE
Dolichonyx oryzivorus, Bobolink
Agelaius phoeniceus, Red-winged Blackbird
Agelaius tricolor, Tricolored Blackbird
Agelaius humeralis, Tawny-shouldered Blackbird
Agelaius xanthomus, Yellow-shouldered Blackbird
Sturnella magna, Eastern Meadowlark
Sturnella neglecta, Western Meadowlark
Xanthocephalus xanthocephalus, Yellow-headed Blackbird
Euphagus carolinus, Rusty Blackbird
Euphagus cyanocephalus, Brewer's Blackbird
Quiscalus quiscula, Common Grackle
Quiscalus major, Boat-tailed Grackle
Quiscalus mexicanus, Great-tailed Grackle
Quiscalus niger, Greater Antillean Grackle
Molothrus bonariensis, Shiny Cowbird
Molothrus aeneus, Bronzed Cowbird
Molothrus ater, Brown-headed Cowbird
Icterus portoricensis, Puerto Rican Oriole
Icterus wagleri, Black-vented Oriole
Icterus spurius, Orchard Oriole
Icterus cucullatus, Hooded Oriole
Icterus pustulatus, Streak-backed Oriole
Icterus bullockii, Bullock's Oriole
Icterus gularis, Altamira Oriole
Icterus graduacauda, Audubon's Oriole
Icterus galbula, Baltimore Oriole
Icterus parisorum, Scott's Oriole
Family FRINGILLIDAE
Subfamily FRINGILLINAE
Fringilla coelebs, Common Chaffinch
Fringilla montifringilla, Brambling
Subfamily EUPHONIINAE
Euphonia musica, Antillean Euphonia
Subfamily CARDUELINAE
Leucosticte tephrocotis, Gray-crowned Rosy-Finch
Leucosticte atrata, Black Rosy-Finch
Leucosticte australis, Brown-capped Rosy-Finch
Pinicola enucleator, Pine Grosbeak
Carpodacus erythrinus, Common Rosefinch
Carpodacus purpureus, Purple Finch
Carpodacus cassinii, Cassin's Finch
Carpodacus mexicanus, House Finch
Loxia curvirostra, Red Crossbill
Loxia leucoptera, White-winged Crossbill
Acanthis flammea, Common Redpoll
Acanthis hornemanni, Hoary Redpoll
Spinus spinus, Eurasian Siskin
Spinus pinus, Pine Siskin
Spinus psaltria, Lesser Goldfinch
Spinus lawrencei, Lawrence's Goldfinch
Spinus tristis, American Goldfinch
Chloris sinica, Oriental Greenfinch
Pyrrhula pyrrhula, Eurasian Bullfinch
Coccothraustes vespertinus, Evening Grosbeak
Coccothraustes coccothraustes, Hawfinch
Subfamily DREPANIDINAE
Telespiza cantans, Laysan Finch
Telespiza ultima, Nihoa Finch
Psittirostra psittacea, Ou
Loxioides bailleui, Palila
Pseudonestor xanthophrys, Maui Parrotbill
Hemignathus virens, Hawaii Amakihi
Hemignathus flavus, Oahu Amakihi
Hemignathus kauaiensis, Kauai Amakihi
Hemignathus ellisianus, Greater

Akialoa
Hemignathus lucidus, Nukupuu
Hemignathus munroi, Akiapolaau
Magumma parva, Anianiau
Oreomystis bairdi, Akikiki
Oreomystis mana, Hawaii Creeper
Paroreomyza maculata, Oahu Alauahio
Paroreomyza flammea, Kakawahie
Paroreomyza montana, Maui Alauahio
Loxops caeruleirostris, Akekee
Loxops coccineus, Akepa
Vestiaria coccinea, Iiwi
Palmeria dolei, Akohekohe
Himatione sanguinea, Apapane
Melamprosops phaeosoma, Poo-uli

PART 21—[AMENDED]

3. The authority citation for part 21 is revised to read as follows:

Authority Migratory Bird Treaty Act, 65 Pub. L. No. 65–186, 40 Stat. 755 (1918) (16 U.S.C. 703–12), as amended.

§ 21.3 [Amended]

4. Amend § 21.3, the definition of "Raptor", by adding the words "the Order Accipitriformes," immediately before the words "the Order Falconiformes".

Dated: April 6, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–9448 Filed 4–25–11; 8:45 am]

BILLING CODE 4310–55–P

Reader Aids

Federal Register

Vol. 76, No. 80

Tuesday, April 26, 2011

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

9 CFR

56.....22295
91.....18347
145.....22295
146.....22295
147.....22295
201.....18348
391.....20220
590.....20220
592.....20220

Proposed Rules:

Ch. I.....22058
11.....20569
Ch. II.....22058
Ch. III.....22058

10 CFR

26.....22802
430.....19902, 22454
431.....21580
835.....20489

Proposed Rules:

Ch. II.....18965
26.....23208
429.....21813
430.....18105, 18425, 19913, 20090, 22324
431.....18127, 18428, 21673
Ch. III.....18954
Ch. X.....18954

12 CFR

213.....18349
226.....18354, 22948
563e.....20490
717.....18365
748.....18365
965.....18367
966.....18367
969.....18367
987.....18367
1270.....18367

Proposed Rules:

42.....21169
48.....22633
Ch. II.....22662
204.....20892
217.....20892
230.....20892
234.....18445
236.....21169
252.....22648
327.....21256
329.....21265
330.....21265
372.....21169
381.....22648
563h.....21169
741.....21169
751.....21169
1232.....21169

13 CFR

109.....18007
120.....18376

14 CFR

23.....19903
27.....20490
39.....18020, 18022, 18024, 18029, 18031, 18033, 18038, 18376, 18865, 20229, 20231, 20493, 20496, 20498, 20501, 20503, 22005, 22007, 22296, 22298, 22302, 22305, 22308, 22311, 22316, 22319, 23169
61.....19267
71.....18040, 18041, 18378, 20233, 20835, 22009, 22010, 22011, 22012, 22013, 22014, 22015, 22016
95.....21622
97.....18379, 18382, 21232, 21234
244.....23110
250.....23110
253.....23110
259.....23110
399.....23110

Proposed Rules:

33.....18130
39.....18454, 18664, 18957, 18960, 18964, 19278, 19710, 19714, 19716, 19719, 19721, 19724, 20894, 20898, 21675, 21815, 21820, 21822, 22059, 22828, 22830, 23218
71.....19281, 20279, 20280, 20281, 21266, 21268, 21269, 21825, 21826, 21827, 21828, 21830, 21831, 21832
121.....21270
139.....20570

15 CFR

730.....21628
744.....21628
774.....22017

Proposed Rules:

806.....19282

16 CFR

305.....20233
306.....19684
1217.....22019, 22030
1303.....18645
1610.....22608

Proposed Rules:

1224.....19914
1500.....19926

17 CFR

Ch. I.....20835
240.....20506

Proposed Rules:

Ch. I.....23221
Ch. II.....23221
46.....22833
229.....18966
240.....18966
248.....21169

18 CFR

40.....23171
358.....20838

Proposed Rules:

Ch. I.....18954
40.....23222
284.....20571

19 CFR

101.....22804

Proposed Rules:

4.....18132
24.....18132
351.....23225

20 CFR

404.....18383, 19692
416.....18383, 19692

Proposed Rules:

404.....20282
416.....20282
Ch. IV.....18104
Ch. V.....18104
Ch. VI.....18104
Ch. VII.....18104
Ch. IX.....18104

21 CFR

179.....20509
520.....18648
522.....22610
610.....20513
866.....22322
878.....20840, 22805
884.....21237
1314.....20518

Proposed Rules:

Ch. I.....20568, 20588
1.....20901
7.....20901
11.....19192, 19238
16.....20575, 20901
101.....19192, 19238
312.....20575
511.....20575
812.....20575

22 CFR

62.....23177

Proposed Rules:

120.....20590
124.....20590

23 CFR

1340.....18042

25 CFR

Proposed Rules:

Ch. I.....20287
Ch. III.....18457
Ch. V.....20568

26 CFR

1.....19268, 19907, 20524
300.....21805
301.....18059, 18385, 22611

Proposed Rules:

1.....20593, 20595, 22064, 22336
31.....20595, 22064
301.....18134

27 CFR

19.....19908
30.....19908

Proposed Rules:

9.....22338

28 CFR

0.....21239
51.....21239
94.....19909

29 CFR

4.....18832
516.....18832
531.....18832
553.....18832
778.....18832
779.....18832
780.....18832
785.....18832
786.....18832
790.....18832
2520.....18649
4022.....21252
4042.....18388
4044.....18869

Proposed Rules:

Ch. II.....18104
Ch. IV.....18104
Ch. V.....18104
Ch. XVII.....18104
Ch. XXV.....18104
2520.....19285
Ch. XL.....18134

30 CFR

Proposed Rules:

Ch. I.....18104
104.....18467
938.....18467

31 CFR

306.....18062
356.....18062
357.....18062
363.....18062

Proposed Rules:

538.....22339
560.....22339

32 CFR

311.....22612, 22613
321.....22807
322.....22614, 22615
323.....22808
701.....22616
706.....22322

Proposed Rules:

83.....22848
223.....22849

33 CFR

100.....22033, 23185
110.....20524, 21633
117.....19910, 19911, 20843, 21253, 21636, 23185, 23187, 23188
165.....18389, 18391, 18394, 18395, 18398, 18869, 19698, 20530, 20532, 20843, 21253, 21637, 22033, 22035, 22809, 22812, 23189
167.....23191, 23193

Proposed Rules:

100.....19926, 20595
110.....20287
165.....18669, 18672, 18674, 19290, 20287, 21677, 22064, 23227

34 CFR

600.....20534
602.....20534
603.....20534
668.....20534
682.....20534
685.....20534
686.....20534
690.....20534
691.....20534

Proposed Rules:

99.....19726

36 CFR

Proposed Rules:

Ch. II.....22058

294.....21272

37 CFR

1.....18400

Proposed Rules:

Ch. I.....22854
1.....18990
370.....21833
382.....21833

39 CFR

3020.....22618

Proposed Rules:

3050.....20906

40 CFR

51.....18870
52 .....18650, 18870, 18893, 20237, 20239, 20242, 20846, 20850, 20853, 21639, 21807, 22036, 22038, 22814, 22817, 23196
60.....18408
62.....22822
63.....18064, 22566
75.....18415, 20536
80.....18066
85.....19830
86.....19830
98.....22825
112.....18894, 21652
158.....22044
161.....22044
180 .....18895, 18899, 18906, 18915, 19701, 20537, 20542, 22045, 22620
268.....18921
271.....18927
300.....18066, 20546
1042.....20550

Proposed Rules:

50.....22665
52 .....19292, 19662, 19739, 20291, 20293, 20296, 20598, 20602, 20906, 20907, 20910, 21682, 21691, 21835
62.....22861
63.....21692
122.....22174
125.....22174
158.....21294
168.....18995
174.....22067
180.....19001, 22067
268.....19003
271.....19004
281.....21299
300.....18136, 20605
355.....21299

41 CFR

300.....18326
302.....18326

Proposed Rules:

Ch. 50.....18104
Ch. 60.....18104
Ch. 61.....18104
Ch. 109.....18954
60-250.....23358
60-300.....23358

42 CFR

5.....20867
413.....18930
417.....21432
422.....21432
423.....21432
433.....21950

Proposed Rules:

Ch. I.....20568
5.....22070
Ch. IV.....20568
424.....18472
425.....19528
441.....21311
Ch. V.....20568

43 CFR

2090.....23198
2800.....23198

Proposed Rules:

2090.....23230
2800.....23230

44 CFR

64.....18934
65 .....18938, 20551, 20553, 20554, 20556, 21660, 21662, 22054
67.....21664

Proposed Rules:

67 .....19005, 19007, 19018, 20606, 21693, 21695

45 CFR

2553.....20243

Proposed Rules:

Ch. II.....20568
Ch. III.....20568
Ch. IV.....20568
Ch. X.....20568
Ch. XIII.....20568
1355.....18677
1356.....18677
1357.....18677

46 CFR

115.....19275
170.....19275
176.....19275
178.....19275
520.....19706
532.....19706

Proposed Rules:

502.....19022

47 CFR

73 .....18415, 18942, 19275, 19276, 20248, 20249
74.....18942
300.....18652

Proposed Rules:

1 .....18137, 18476, 18490, 18679, 20297, 22340
6.....20297
7.....20297
8.....20297
17.....18679
22.....18679
24.....18679
25.....18679
27.....18679
64.....18490
73.....18497
80.....18679
87.....18679
90.....18679

48 CFR

Ch. 1.....18304
1.....18324
2.....18304
4.....18304
6.....18304
13.....18304
14.....18304
15.....18304
18.....18304
19.....18304
26.....18304
33.....18304
36.....18304
42.....18304
52.....18304
53 .....18072, 18304, 18322
202.....21809, 21810
204.....21809
209.....21812
212.....21810
234.....21810
252.....21809, 21812
604.....20249
637.....20249
652.....20249

Proposed Rules:

2.....18497, 23236
3.....23236
4.....22070, 23236
7.....23236
8.....22070
9.....23236
11.....23236
12.....23236
13.....23236
14.....23236
15.....23236
16.....23236
17.....22070
18.....23236
31.....18497
32.....18497
37.....22070, 23236
42.....23236
45.....18497
49.....18497
52 .....18497, 22070, 23236
53.....18497, 23236
204.....21847
212.....21847
213.....21849
236.....21851
245.....21852
252.....21847
Ch. 3.....20568
Ch. 4.....22058
Ch. 9.....18954
Ch. 29.....18104

49 CFR

8.....19707
40.....18072
213.....18073
393.....20867
541.....20251
1503.....22625

Proposed Rules:

384.....19023
385.....20611
390.....20611
395.....20611
544.....20298
571.....23254, 23255

50 CFR

17.....18087, 20558
218.....20257
224.....20870
226.....20180
300.....19708
622.....18416, 23205
635.....18417, 18653
648 .....18661, 19276, 23042, 23076, 23206
679 .....18663, 19912, 20890, 22057

Proposed Rules:

10.....23428
17 .....18138, 18684, 18701, 19304, 20464, 20613, 20911, 20918, 23256, 23265
20.....19876
21.....23428
223.....20302
224.....20302
300.....18706
600.....22342
622.....22345
635.....18504
648 .....18505, 19305, 19929, 22350
660.....18706, 18709
665.....19028

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4/P.L. 112–9
Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Apr. 14, 2011; 125 Stat. 36)

H.R. 1473/P.L. 112–10
Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Apr. 15, 2011; 125 Stat. 38)

Last List April 13, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.