AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 132 July 10, 2012

Pages 40459–40778

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: 77 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, September 11, 2012
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

Printed on recycled paper.

Contents

Federal Register

Vol. 77, No. 132

Tuesday, July 10, 2012

Agency for Healthcare Research and Quality
NOTICES
Requests for Nominations:
Workgroups on ICD–10–CM/PCS Conversion of Quality Indicators; Extension of Deadline, 40620–40622

Agricultural Marketing Service
PROPOSED RULES
Soybean Promotion and Research:
Adjustment of Representation on United Soybean Board, 40529–40530

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Asian Longhorned Beetle Consumer Research Survey, 40564–40565

Bureau of Consumer Financial Protection
RULES
Electronic Fund Transfers:
Regulation E; Correction, 40459–40478

Centers for Disease Control and Prevention
NOTICES
Meetings:
Mine Safety and Health Research Advisory Committee, 40622

Coast Guard
RULES
Drawbridge Operations:
Oakland Inner Harbor Tidal Canal, Alameda, CA, 40509
Safety Zones:
Detroit Symphony Orchestra at Ford House Fireworks, Lake St. Clair, Grosse Pointe Shores, MI, 40515–40518
Fireworks Display in Captain of the Port, Puget Sound Zone, 40509–40511
GR Symphony Fireworks Display, Kalamazoo Lake, Saugatuck, MI, 40511–40513
Major Motion Picture Filming, Atlantic Intracoastal Waterway; Southport, NC, 40513–40515
Swim Events in the Captain of the Port New York Zone; Hudson River, East River, etc., New York, NY, 40518–40521
Security Zones:
Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA, 40521–40524
PROPOSED RULES
Safety Zones:
ESI Ironman 70.3 Augusta Triathlon, Savannah River; Augusta, GA, 40544–40547
Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL, 40541–40544
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40624–40626

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Amendment to the 2012 Tariff Preference Level for Nicaragua, 40589

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Implemetation of Title I/II Program Initiatives, 40589
Pell Grant Experiments Study, 40590
Applications for New Awards:
Disability and Rehabilitation Research Projects and Centers Program; Burn Model Systems Centers; Correction, 40590–40591
Disability and Rehabilitation Research Projects, Employment of Individuals with Disabilities, 40596–40601
Veterans Upward Bound Program, 40591–40596
Final Priorities:
Disability and Rehabilitation Research Projects and Centers Program; Employment of Individuals with Disabilities, 40601–40604

Employment and Training Administration
NOTICES
Affirmative Determinations Regarding Applications for Reconsideration:
Northwest Hardwoods, Inc., Tacoma, WA, 40636–40637
Wyatt VI, Inc., Christiansted, St. Croix, USVI, 40637
Amended Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance:
First Choice Staffing, Ametek Nationals Controls Corp., West Chicago, IL, 40638–40639
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance:
General Motors Vehicle Manufacturing, Shreveport, LA, 40639
Amended Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance:
Honeywell International, Scanning and Mobility Division, et al., Skaneateles Falls, NY, 40637
Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance:
Smurfit–Stone Container Corp., et al., Ontonagon, MI, 40637–40638
Syniverse Technologies, Inc., et al., Watertown, MA, 40638
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, 40639–40643
Investigations Regarding Eligibility to Apply for Worker Adjustment Assistance, 40643–40644

Negative Determinations on Reconsideration:
Specialty Bar Products Co., Blairsville, PA, 40644
Revised Determinations on Reconsideration:
Era Systems, LLC, Syracuse, NY, 40644–40645

Energy Department
See Federal Energy Regulatory Commission
See Southwestern Power Administration
PROPOSED RULES
Energy Conservation Standards for Residential Furnace Fans:
Public Meeting and Availability of Preliminary Technical Support Document, 40530–40534

Environmental Protection Agency
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Maryland; Revision for the Control of Volatile Organic Compounds Emissions from Vehicle Refinishing, 40550–40552
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Acid Rain Program under Title IV of the Clean Air Act Amendments, 40611–40612

Export–Import Bank
NOTICES
Economic Impact Policy, 40612
Meetings; Sunshine Act, 40612

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 40485–40488
Rolls-Royce Corporation Turboshaft Engines, 40479–40481
The Boeing Company Airplanes, 40481–40485
Amendment of Class D and Class E Airspace:
Lakehurst, NJ, 40488–40489
Amendment of Class E Airspace:
Memphis, TN, 40489–40490
Establishment of Area Navigation (RNAV) Routes:
Southwestern United States, 40490
Operations Specifications; OMB Approval of Information Collection, 40493
Removal of Definitions; Confirmation of Effective Date and Response to Public Comments, 40478–40479
Revocation and Modification of Multiple Domestic, Alaskan, and Hawaiian Compulsory Reporting Points, 40490–40492
Revocation of Class D Airspace and Amendment of Class E Airspace:
Andalusia and Fort Rucker, AL, 40492–40493
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee on Transport Airplane and Engine Issues; Teleconference, 40699–40700
Petitions for Exemptions, 40700

Federal Deposit Insurance Corporation
NOTICES
Terminations of Receiverships:
Pinehurst Bank, St. Paul, MN, 40613
Signature Bank, Windsor, CO, 40612–40613

Federal Emergency Management Agency
NOTICES
Personal Assistance Services in Shelters Fact Sheet; Availability, 40626–40627
Proposed Flood Hazard Determinations, 40627–40628

Federal Energy Regulatory Commission
NOTICES
Applications:
Pendleton, OR, 40604–40605
Waterville, VT, 40606
Commission Staff Attendances:
Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, 40606
Declarations of Intention and Petitions for Relief:
United Water, 40606–40607
Environmental Assessments; Availability, etc.:
Whitman River Dam, Inc., 40607–40608
Filings:
Samuel A. Nunn, 40608
Petitions for Declaratory Orders:
Wisconsin Electric Power Co., 40608
Petitions for Enforcement and Declaratory Orders:
Exelon Wind 1, LLC, Exelon Wind 2, LLC, Exelon Wind 3, LLC, et al., 40608–40609
Petitions for Rate Approval and Revised Statements of Operating Conditions:
SourceGas Distribution LLC, 40609

Federal Housing Finance Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40613–40614

Federal Railroad Administration
NOTICES
Applications for Approval of Discontinuance or Modification of Railroad Signal Systems, 40700–40701
Petitions for Approval; Informational Filing and Request for Waiver, 40701–40702

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 40614

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40614–40618

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for Buena Vista Lake Shrew, 40706–40733
NOTICES
Draft Safe Harbor Agreements and Enhancement of Survival Permit Applications:
Tres Rios Project, 40628–40629

Food and Drug Administration
PROPOSED RULES
Unique Device Identification System, 40736–40778
NOTICES
Meetings:
Anti-Infective Drugs Advisory Committee, 40622–40623

Foreign Assets Control Office
NOTICES
Designation of One Individual Pursuant to Executive Order 13224, 40702–40703

Forest Service
NOTICES
Meetings:
Northwest Forest Plan Provincial Advisory Committees, 40565

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
Price Analysis Techniques, 40552–40553

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Requirements and Registration for SMART–Indivo Challenge, 40618–40619
Requirements and Registration for What's In Your Health Record Video Challenge, 40619–40620

Healthcare Research and Quality Agency
See Agency for Healthcare Research and Quality

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Fiscal Year 2012 Transformation Initiative:
Natural Experiments Research Grant Program, Cancellation, 40628

Industry and Security Bureau
RULES
Export Administration Regulations; CFR Correction, 40493–40494

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40703–40704

International Trade Administration
PROPOSED RULES
Definition of Factual Information and Time Limits for Submission of Factual Information, 40534–40539
NOTICES
Antidumping and Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc., 40565–40574
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Frozen Warmwater Shrimp from Thailand, 40574–40579
Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from People's Republic of China, 40579–40586

Justice Department
See National Institute of Corrections
PROPOSED RULES
Privacy Act; Implementation, 40539–40541
NOTICES
Privacy Act; Systems of Records, 40630–40634

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
See Workers Compensation Programs Office

Land Management Bureau
NOTICES
Coal Exploration License Applications:
WYW180996, Wyoming, 40629–40630
Competitive Coal Lease Sales:
Colorado, 40630

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 40646

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council Technology and Innovation Committee, 40646–40647

National Institute of Corrections
NOTICES
Cooperative Agreements; Solicitations:
Pretrial Technical Assistance for Evidence-Based Decision Making in Local Criminal Justice Systems, 40634–40636

National Institute of Standards and Technology
NOTICES
Draft Interagency Report 7823, Advanced Metering Infrastructure Smart Meter Upgradeability Test Framework, 40586

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 40623–40624
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 40623

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the 2012 Trimester 2 Directed Longfin Squid Fishery, 40527–40528
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery of the Gulf of Mexico; Amendment 34, 40561–40563
High Seas Driftnet Fishing Moratorium Protection Act:
Identification and Certification Procedures to Address Shark Conservation, 40553–40561
NOTICES
Deep Sea Hard Mineral Eexploration Licenses and Amended Exploration Plans; Extensions, 40586–40587

Meetings:
Caribbean Fishery Management Council, 40587
Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review, 40587
Pacific Fishery Management Council, 40588
Permits:
Endangered Species; File No. 16598, 40588

National Park Service
PROPOSED RULES
Special Regulations; Areas of the National Park System:
Chattahoochee River National Recreation Area, Bicycle Routes, 40547–40550

National Science Foundation
NOTICES
Meetings:
Toward Innovative Spectrum-Sharing Technologies; Wireless Spectrum Research and Development Senior Steering Group, 40647

Nuclear Regulatory Commission
NOTICES
Applications and Amendments; Biweekly Notice:
Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 40647–40657

Occupational Safety and Health Administration
RULES
Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act, 40494–40509

Postal Service
RULES
New Express Mail Price Categories:
Express Mail Padded Flat Rate Envelope, 40527

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40657–40659

Securities and Exchange Commission
NOTICES
Applications:
AQR Capital Management, LLC, et al., 40659–40664
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 40664–40666
Municipal Securities Rulemaking Board, 40668–40671
NASDAQ OMX BX, Inc., 40666–40668, 40688–40692
NASDAQ OMX PHLX LLC, 40684–40688
New York Stock Exchange LLC, 40673–40684
NYSE MKT LLC, 40671–40673

Southwestern Power Administration
NOTICES
Robert D. Willis Power Rate, 40609–40610

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contact Information and Work History for Nonimmigrant Visa Applicant, 40692–40693
Local U.S. Citizen Skills/Resources Survey, 40693
Notifications to the Congress of Proposed Commercial Export Licenses, 40693–40699

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
See United States Mint
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40702

United States Mint
NOTICES
Price for the 2012 American Eagle Silver Uncirculated Coin, 40704

Veterans Affairs Department
RULES
Dependency and Indemnity Compensation:
Surviving Spouse with One or More Children Under Age 18, 40524–40525
Survivors of Former Prisoners of War Rated Totally Disabled at Time of Death, 40525–40526

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 40645–40646

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 40706–40733

Part III
Health and Human Services Department, Food and Drug Administration, 40736–40778

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.

7 CFR

Proposed Rules:

1220 40529

10 CFR

Proposed Rules:

430 40530

12 CFR

1005 40459

14 CFR

1 40478
39 (3 documents) 40479, 40481, 40485
71 (5 documents) 40488, 40489, 40490, 40492
129 40493

15 CFR

740 40493
742 40493
748 40493
750 40493
752 40493
760 40493

19 CFR

Proposed Rules:

351 40534

21 CFR

Proposed Rules:

16 40736
801 40736
803 40736
806 40736
810 40736
814 40736
820 40736
821 40736
822 40736
830 40736

28 CFR

Proposed Rules:

16 40539

29 CFR

1983 40494

33 CFR

117 40509
165 (6 documents) 40509, 40511, 40513, 40515, 40518, 40521

Proposed Rules:

165 (2 documents) 40541, 40544

36 CFR

Proposed Rules:

7 40547

38 CFR

3 (2 documents) 40524, 40525

39 CFR

111 40527

40 CFR

Proposed Rules:

52 40550

48 CFR

Proposed Rules:

15 40552

50 CFR

648 40527

Proposed Rules:

17 40706
300 40553
622 40561

Rules and Regulations

Federal Register

Vol. 77, No. 132

Tuesday, July 10, 2012

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

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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2011–0009]

RIN 3170–AA15

Electronic Fund Transfers (Regulation E); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation; correction.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is correcting a final rule with an official interpretation (Final Rule) that appeared in the **Federal Register** of February 7, 2012. The Final Rule provides new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. The Final Rule inadvertently did not reflect certain technical and conforming changes made by the interim final rule published on December 27, 2011. The Final Rule also contained a technical error in the formatting of certain model forms. This document corrects the error and the formatting of the model forms.

DATES: These corrections are effective February 7, 2013.

FOR FURTHER INFORMATION CONTACT: Stephen Shin or Krista Ayoub, Senior Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

SUPPLEMENTARY INFORMATION:

I. Overview

On Tuesday, February 7, 2012, the Bureau published the Final Rule (77 FR 6194), which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The Final Rule provides new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. The amendments implement statutory requirements set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Final Rule inadvertently did not reflect certain technical and conforming changes made to § 1005.3(a) in the interim final rule published on December 27, 2011 (76 FR 81020). The interim final rule substantially duplicated the Board of Governors of the Federal Reserve System's Regulation E, and made only certain non-substantive, technical, and stylistic changes necessary to reflect the transfer of authority to the Bureau. This correction will remove the amendment the Final Rule made to § 1005.3(a) of the interim final rule.

The Final Rule also contained a technical error in the formatting of certain model forms. Instead of each form being published on separate pages, certain forms were published in the standard three-column format. To correct this error, this document republishes the model forms as full-page versions.

II. Basis for the Corrections

The Bureau is publishing this technical correction as a final rule that will be effective on the same date as the Final Rule. The Bureau finds that there is good cause to publish this Final Rule without seeking public comment. See 5 U.S.C. 553(b)(B). Public comment is unnecessary because the rule corrects inadvertent, technical errors about which there is minimal, if any, basis for substantive disagreement. In addition, the Final Rule restores changes made to § 1005.3(a) in the interim final rule, Electronic Fund Transfers (Regulation E), published on December 27, 2011 (76 FR 81020) for which the Bureau found good cause to conclude that providing notice and opportunity for comment would have been unnecessary and contrary to the public interest but for which the Bureau nevertheless requested public comment.

In FR Doc. 2012–1728 appearing on page 6194 in the **Federal Register** on Tuesday, February 7, 2012, the following corrections are made:

■ 1. On page 6285, in the second column, in Subpart A, § 1005.3(a) is corrected to read as follows:

§ 1005.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20, this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376. The requirements of subpart B apply to remittance transfer providers.

* * * * *

■ 2. On page 6290 through 6297, in Appendix A to Part 1005, Model Forms A–30 through A–41 are corrected to read as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

BILLING CODE 4810–AM–P

A-30 – Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

A-31 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

RECEIPT

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2013

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-32 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

SENDER:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

RECIPIENT:
Carlos Gomez
123 Calle XXX
Mexico City
Mexico

PICK-UP LOCATION:
ABC Company
65 Avenida YYY
Mexico City
Mexico

Confirmation Code: ABC 123 DEF 456

Date Available: March 4, 2013

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Exchange Rate: US$1.00 = 12.27 MXN

Transfer Amount:	1,227.00 MXN
Other Fees:	-30.00 MXN
Other Taxes:	-10.00 MXN
Total to Recipient:	1,187.00 MXN

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-33 – Model form for Pre-Payment Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

NOT A RECEIPT

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Other Taxes:	-$1.00
Total to Recipient:	$95.00

A-34 – Model Form for Receipts for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

RECEIPT

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2013

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Other Taxes:	-$1.00
Total to Recipient:	$95.00

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-35 – Model Form for Combined Disclosures for Dollar-to-Dollar Remittance Transfers (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Today's Date: March 3, 2013

SENDER:	RECIPIENT:
Pat Jones	Carlos Gomez
100 Anywhere Street	106 Calle XXX
Anytown, Anywhere 54321	Mexico City
301-555-1212	Mexico
	PICK-UP LOCATION:
	ABC Company
	65 Avenida YYY
	Mexico City
	Mexico

Confirmation Code:	ABC 123 DEF 456
Date Available:	March 4, 2013

Transfer Amount:	$100.00
Transfer Fees:	+$7.00
Transfer Taxes:	+$3.00
Total:	$110.00

Transfer Amount:	$100.00
Other Fees:	-$4.00
Other Taxes:	-$1.00
Total to Recipient:	$95.00

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at 800-123-4567 or www.abccompany.com. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about ABC Company, contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-36 – Model Form for Error Resolution and Cancellation Disclosures (Long)
(§ 1005.31(b)(4))

What to do if you think there has been an error or problem:

If you think there has been an error or problem with your remittance transfer:

- **Call us at [insert telephone number][; or]**
- **Write us at [insert address][; or]**
- **[E-mail us at [insert electronic mail address]].**

You must contact us within 180 days of the date we promised to you that funds would be made available to the recipient. When you do, please tell us:

(1) Your name and address [or telephone number];

(2) The error or problem with the transfer, and why you believe it is an error or problem;

(3) The name of the person receiving the funds, and if you know it, his or her telephone number or address; [and]

(4) The dollar amount of the transfer; [and

(5) The confirmation code or number of the transaction.]

We will determine whether an error occurred within 90 days after you contact us and we will correct any error promptly. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of any documents we used in our investigation.

What to do if you want to cancel a remittance transfer:
You have the right to cancel a remittance transfer and obtain a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or e-mail address] above within 30 minutes of payment for the transfer.

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and location where the funds were sent. We will refund your money within three business days of your request to cancel a transfer as long as the funds have not already been picked up or deposited into a recipient's account.

A-37 – Model Form for Error Resolution and Cancellation Disclosures (Short)
(§§ 1005.31(b)(2)(iv) and (b)(2)(vi))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:

A-38 – Model Form for Pre-Payment Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(1))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2013

ESTE NO ES UN RECIBO

Cantidad de Envio:	$100.00
Cargos por Envio:	+$7.00
Impuestos de Envio:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envio:	1,227.00 MXN
Otros Cargos por Envio:	-30.00 MXN
Otros Impuestos de Envio:	-10.00 MXN
Total al Destinatario:	1,187.00 MXN

A-39 – Model Form for Receipts for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(2))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2013

RECIBO

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2013

Cantidad de Envío:	$100.00
Cargos por Envío:	+$7.00
Impuestos de Envío:	+$3.00
Total:	$110.00

Tasa de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envío:	1,227.00 MXN
Otros Cargos por Envío:	-30.00 MXN
Otros Impuestos de Envío:	-10.00 MXN
Total al Destinatario:	1,187.00 MXN

Usted tiene el derecho de discutir errores en su transaccion. Si cree que hay un error, contáctenos dentro de 180 días al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envío y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja
sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-40 – Model Form for Combined Disclosures for Remittance Transfers Exchanged into Local Currency – Spanish (§ 1005.31(b)(3))

ABC Company
1000 XYZ Avenue
Anytown, Anystate 12345

Fecha: 3 de marzo de 2013

REMITENTE:
Pat Jones
100 Anywhere Street
Anytown, Anywhere 54321
222-555-1212

DESTINATARIO:
Carlos Gomez
123 Calle XXX
Ciudad de Mexico, D.F.
Mexico

PUNTO DE PAGO:
ABC Company
65 Avenida YYY
Ciudad de Mexico, D.F.
Mexico

Código de Confirmación: ABC 123 DEF 456

Fecha Disponible: 4 de marzo de 2013

Cantidad de Envio:	$100.00
Cargos por Envio:	+$7.00
Impuestos de Envio:	+$3.00
Total:	$110.00

Tipo de Cambio: US$1.00 = 12.27 MXN

Cantidad de Envio:	1,227.00 MXN
Otros Cargos por Envio:	-30.00 MXN
Otros Impuestos de Envio:	-10.00 MXN
Total al Destinatario:	1,187.00 MXN

Usted tiene el derecho de discutir errores en su transaccion. Si cree que hay un error, contáctenos dentro de 180 dias al 800-123-4567 o www.abccompany.com. También puede contactarnos para obtener una explicación escrita de sus derechos.

Puede cancelar el envio y recibir un reembolso total dentro de 30 minutos de haber realizado el pago, a no ser que los fondos hayan sido recogidos o depositados.

Para preguntas o presentar una queja
sobre ABC Company, contacte a:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

A-41 – Model Form for Error Resolution and Cancellation Disclosures (Long) – Spanish (§ 1005.31(b)(4))

Lo que usted debe hacer si cree que hay un error o problema:

Si cree que hay un error o problema con su envío de dinero:

- **Llámenos a [inserte número de teléfono][; o]**
- **Escríbanos a [inserte dirección][; o]**
- **[Envíenos un correo electrónico a [inserte dirección de correo electrónico].**

Debe contactarnos dentro de 180 días a partir de la fecha en que se le prometió que los fondos estarían disponibles al destinatario. Cuando se comunique con nosotros, por favor provea la siguiente información:

(1) Su nombre y dirección [o número de teléfono];

(2) El error o problema con su envío de dinero, y por qué cree que hay un error o problema;

(3) El nombre del destinatario, y si lo sabe, su número de teléfono o dirección; [y]

(4) El monto del envío en dólares; [y

(5) El código de confirmación o el número de la transacción.]

Nosotros determinaremos si ocurrió un error dentro de 90 días después de que usted nos contacte y lo corregiremos rápidamente. Le diremos los resultados dentro de tres días hábiles después de terminar nuestra investigación. Si decidimos que no hubo un error, le enviaremos a usted una explicación escrita. Usted puede pedir copias de los documentos que usamos en nuestra investigación.

Lo que usted debe hacer si quiere cancelar un envío de dinero:

Tiene el derecho de cancelar un envío de dinero y obtener un reembolso de todo el dinero, incluyendo tarifas o gastos que usted nos pagó. Para cancelar debe contactarnos al [número de teléfono o dirección de correo electrónico] que se encuentra arriba dentro de 30 minutos de haber realizado el pago para el envío de dinero.

Cuando nos contacte, debe proveernos información que nos ayudará a identificar el envío de dinero que quiere cancelar, incluyendo la cantidad del envío y el lugar adonde fue enviado. Le reembolsaremos su dinero dentro de tres días hábiles de su petición de cancelar, a no ser que los fondos hayan sido recogidos o depositados en la cuenta del destinatario.

Dated: June 26, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–16245 Filed 7–9–12; 8:45 am]

BILLING CODE 4810–AM–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. FAA–2012–0019; Amdt. No. 1–67]

RIN 2120– AK03

Removal of Category IIIa, IIIb, and IIIc Definitions; Confirmation of Effective Date and Response to Public Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and response to public comments.

SUMMARY: This action confirms the effective date of the direct final rule published on February 16, 2012 (77 FR 9163), and responds to the comments received on that direct final rule. In that document, the FAA proposed to remove the definitions of Category IIIa, IIIb, and IIIc operations because the definitions are outdated and no longer used for aircraft certification or operational authorization.

DATES: The direct final rule published on February 16, 2012 (77 FR 9163), and delayed on April 13, 2012 (77 FR 22186), became effective on June 12, 2012.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Bryant Welch, Flight Technologies and Procedures Division, Flight Operations Branch, AFS–410, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 385–4539; email *bryant.welch@faa.gov.*

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *nancy.sanchez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2012, the FAA issued Amendment No. 1–67, entitled ''Removal of Category IIIa, IIIb, and IIIc Definitions'' (77 FR 9163). The direct final rule removes the definitions of Category IIIa, IIIb, and IIIc operations. The definitions are outdated because they are no longer used for aircraft certification or operational authorization. Removing the definitions will aid in international harmonization efforts, future landing minima reductions, and airspace system capacity improvements due to the implementation of performance based operations. The FAA requested that comments on that rule be received on or before March 19, 2012.

By letter dated March 16, 2012, the International Civil Aviation Organization (ICAO) requested that the FAA consider postponing the effective date of the rule until the rule is reviewed through an international process. ICAO stated that due to the short time frame, it was not in the position to understand the full implications of removing the Category IIIa, IIIb, and IIIc definitions. ICAO further stated that additional time was necessary to adequately assess the impact of the Direct Final Rule and prepare comments.

On April 13, 2012, the FAA reopened the comment period for the Direct Final Rule until May 14, 2012, and delayed the effective date from April 16, 2012 to June 12, 2012 (77 FR 22186). A direct final rule takes effect on the specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. If adverse comments are received, the FAA will advise the public by publishing a document in the **Federal Register** before the effective date of the direct final rule. An adverse comment explains why a rule would be inappropriate or would be ineffective or unacceptable without a change, or may challenge the rule's underlying premise or approach. The FAA received eight comments on this rule. The FAA does not consider these comments to be adverse and is therefore publishing this Confirmation of Effective Date and Response to Public Comments in response to those comments.

Discussion of Comments

The FAA received eight comments on this rule. Six of those comments were received during the original comment period, and two comments were received after the comment period reopened. ICAO, Boeing, and five individuals commented on this rule.

On March 16, 2012, ICAO requested that the FAA delay the effective date of the rule so that it may conduct further review of this rulemaking. By letter dated May 14, 2012, ICAO submitted a follow up comment, stating that it has been clarified that ''removal of the Category IIIa, IIIb, and IIIc definitions from 14 CFR part 1 will not impact relevant operational documents such as advisory circulars.'' Additionally, ICAO further stated that ''this initiative would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6—*Operation of Aircraft.* On this basis, the International Civil Aviation Organization has no objection to the change * * *''

Two individual commenters expressed support for this rulemaking. Boeing and three individual commenters expressed concern about various aspects of this rulemaking. Boeing submitted a comment during the original comment period. It stated that ''[w]ithout additional guidance, the removal of these categories' definitions will create confusion and inconsistencies in the establishment of operational authorizations, and leave subject to individual interpretation the low weather minima capabilities of the combined ground, space, and airborne systems.'' Boeing also noted that this rulemaking will require corresponding changes to other FAA regulations, orders and advisory circulars and will have substantial international ramifications. Additionally, Boeing suggested that ''the public be given the opportunity to review the proposed changes in their entirety and comment via the Notice of Proposed Rulemaking (NPRM) process.'' Boeing did not submit an additional comment during the reopened comment period.

Several individual commenters expressed similar concerns. One commenter stated that ''[a] unilateral change of these standards by the United States will negate the current global harmony of these landing definitions, and compel international flight crews to train and operate differently in the United States versus the rest of the world.'' This commenter further stated that ''* * * these changes should not be allowed to become effective until ICAO has changed the internationally recognized standard definitions, and all member states have concurred * * *'' Two anonymous commenters submitted nearly identical comments and stated that ''[t]he proposed definition

relaxation will result in blending the Cat III operational and system performance distinctions, and appears to ignore the potential reduction in safety'' These individuals also commented that ''* * * fail-passive systems and flight crews trained to the fail-passive minimums and procedures will be permitted to fly to fail-operational minimums.''

In response to Boeing's comment, the FAA notes that the removal of the Category IIIa, IIIb, and IIIc definitions will not affect current FAA category III aircraft certifications or operator authorizations and will not require changes to other FAA regulations. Category III standards used in the United States will be completely unaffected by the removal of the Category IIIa, IIIb, and IIIc definitions. The Category III operational concepts represented by the Category IIIa, IIIb, and IIIc definitions are used to develop the certification and authorization criteria and these criteria are then applied directly to individual aircraft certifications and operator authorizations. Thus, the certification of Category III aircraft systems under Advisory Circular (AC) 120–28D no longer directly refers to the Category IIIa, b, and c definitions contained in 14 CFR 1.1, but uses the airworthiness criteria in the AC and the certification statements refer to those criteria as well. Likewise, Operations Specification (OpSpec) C060, the operational authorization for Category III operators, no longer specifically uses the Category IIIa, IIIb, and IIIc definitions, but rather ties authorized weather minima to the certification level of aircraft, as specified in the AC.

In response to the individual comments, the FAA notes that AC 120–28D uses the ICAO Category IIIa, IIIb, and IIIc definitions in its development of Category III operational concepts. Category IIIa, IIIb, and IIIc definitions will continue to be used unless changed in the normal ICAO process. In its second comment, ICAO stated that this rulemaking would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6—*Operation of Aircraft* and therefore has no objection to the change. Thus, operational authorizations for all operators and aircraft certification through AC 120–28D and OpSpec C060 rely only upon the ICAO Category IIIa, IIIb, and IIIc definitions and will be completely unaffected by removing the definitions of Category IIIa, IIIb, and IIIc in the CFR. Additionally, the use of Fail Passive or Fail Operational Category III minima is not bound by the Category III definition. Category III minima are controlled completely by the operational authorization, OpSpec C060, under criteria contained in AC 120–28D. Since, as explained above, the AC criteria will be unaffected by removal of the sub-definitions, CAT III minima authorized through the OpSpec will be unchanged.

Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, Amendment 1–67 remains in effect.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Issued in Washington, DC, on June 11, 2012.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2012–16846 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD; Amendment 39–17120; AD 2012–14–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) 250–C20, –C20B, and –C20R/2 turboshaft engines. This AD was prompted by seven cases reported of released turbine blades and shrouds, which led to loss of power and engine in-flight shutdowns (IFSDs). This AD requires a one-time visual inspection and fluorescent penetrant inspection (FPI) on certain 3rd and 4th stage turbine wheels for cracks in the turbine blades. We are issuing this AD to prevent failure of 3rd or 4th stage turbine wheel blades which could cause engine failure and damage to the airplane.

DATES: This AD is effective August 14, 2012.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce Corporation Customer Support, P.O. Box 420, Indianapolis, IN 46206–0420; phone: 888–255–4766 or 317–230–2720; fax: 317–230–3381, email: *helicoptercustsupp@rolls-royce.com*, and Web site: *www.rolls-royce.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–8180; fax: 847–294–7834; email: *john.m.tallarovic@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on December 20, 2011 (76 FR 78863). That NPRM proposed to require a one-time visual inspection and FPI on certain 3rd and 4th stage turbine wheels for cracks in the turbine blades.

Comments

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

Proposed AD Applicability Clarity

One commenter said that the proposed AD applicability is unclear. The commenter stated that the RRC Commercial Engine Bulletins (CEBs) referenced in the proposed AD apply to specific model 250 engines in MD Helicopter, Inc. aircraft only. However, the proposed AD appears to cover the subject part number (P/N) wheels in three engine models in all applications. Also, the subject P/N wheels can be installed in many engine models in addition to the 250–C20, C20B, and C20R/2 engines called out in the proposed AD. The original issue with the wheels cracking was tied to specific power turbine speed ranges as manifested in specific aircraft applications. As the proposed AD is written, there are airframe applications where one model of installed engine would be subject to the AD and another model being only slightly different and identical in the power turbine section concerned, would not be subject to the AD.

We do not agree. The proposed AD is only applicable to the model 250–C20, C20B, and C20R/2 turboshaft engines on all installations. The affected turbine wheels, P/N 23065818 and P/N 23055944, can be installed on other model 250 engines. However, the proposed AD is only applicable to the model 250–C20, C20B, and C20R/2 turboshaft engines. While RRC Alert CEB–A–1407, Revision 1, dated February 7, 2011 and CEB–A–72–4098, Revision 1, dated February 7, 2011 (combined in one document) is directed at engines installed on MD Helicopters Inc. aircraft, the proposed AD is applicable to all installations of model 250–C20, C20B, and C20R/2 turboshaft engines. The service bulletins do not establish the applicability for the proposed AD. The service bulletins are referenced as related information only. We did not change the AD.

Overhaul Period

One commenter pointed out that paragraph (e)(1) of the proposed AD stated to remove the turbine wheels at the next 1,750 hour overhaul. The overhaul period in these engines is 3,500 hours, not 1,750 hours.

We agree. We changed paragraph (e)(1) to state to remove the 3rd stage turbine wheel, P/N 23065818, and the 4th stage turbine wheel, P/N 23055944, before accumulating 1,750-hours since last inspection.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

We estimate that this AD will affect 500 RRC C250–C20, –C20B, and –C20R/2 turboshaft engines installed on aircraft of U.S. registry. We also estimate that it will take about 5 hours to perform a one-time visual inspection and FPI of the 3rd stage turbine wheel and the 4th stage turbine wheel for each engine. The average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $212,500.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–14–06 Rolls-Royce Corporation (Formerly Allison Engine Company and Allison Gas Turbine Division of General Motors): Amendment 39–17120; Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD.

(a) Effective Date

This AD is effective August 14, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies only to Rolls-Royce Corporation 250–C20, –C20B, and –C20R/2 turboshaft engines with 3rd stage turbine wheel, part number (P/N) 23065818, and 4th stage turbine wheel, P/N 23055944.

(d) Unsafe Condition

This AD was prompted by seven cases reported of released turbine blades and shrouds, which led to loss of power and engine in-flight shutdowns. We are issuing this AD to prevent failure of 3rd or 4th stage turbine wheel blades which could cause engine failure and damage to the airplane.

(e) Compliance

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

(1) Remove the 3rd stage turbine wheel, P/N 23065818, and the 4th stage turbine wheel, P/N 23055944, within 1,750-hours since last inspection.

(2) Perform a one-time visual inspection and a fluorescent penetrant inspection on the 3rd and 4th stage turbine wheels for cracks at the trailing edge of the turbine blades near the fillet at the rim.

(3) If any cracks in the trailing edge near the rim are detected, do not return the wheel to service.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–8180; fax: 847–294–7834; email: *john.m.tallarovic@faa.gov*.

(2) Rolls-Royce Corporation Alert Commercial Engine Bulletin No. CEB–A–1407, Revision 1, dated February 7, 2011 and CEB–A–72–4098, Revision 1, dated February 7, 2011 (combined in one document) pertain to the subject of this AD.

(3) For service information identified in this AD, contact Rolls-Royce Corporation Customer Support, P.O. Box 420, Indianapolis, IN 46206–0420; phone: 888–255–4766 or 317–230–2720; fax: 317–230–3381; email: *helicoptercustsupp@rolls-royce.com*, and Web site: *www.rolls-royce.com*.

(4) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 25, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–16797 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0991; Directorate Identifier 2010–NM–134–AD; Amendment 39–17110; AD 2012–13–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, without a stretched upper deck or stretched upper deck modification. That AD currently requires repetitive inspections for cracks of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary. This new AD requires, for certain airplanes, modifying the tension tie structure or tension tie and frame structure at certain stations; and a post-modification inspection of the modified area and post-modification repetitive inspections of the unmodified area, and repair if necessary. Doing the modification would terminate the repetitive inspection requirements in the existing AD. This AD reduces the compliance time and adds inspections for certain airplanes. This AD was prompted by reports that certain airplanes have tension ties that are susceptible to widespread fatigue damage. This AD also results from reports of cracks on the forward and aft tension tie channels at station (STA) 740 and STA 760, and a determination that initial inspection intervals need to be reduced. We are issuing this AD to prevent tension ties from becoming severed or disconnected from the frames, which could lead to rapid in-flight decompression.

DATES: This AD is effective August 14, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 14, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of February 16, 2006 (71 FR 1947, January 12, 2006).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6428; fax: (425) 917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006). That AD applies to the specified products. The NPRM published in the **Federal Register** on September 22, 2011 (76 FR 58722). That NPRM proposed to continue to require repetitive inspections for cracks of each affected tension tie and of the surrounding structure, and related investigative and corrective actions if necessary. For certain airplanes, that NPRM proposed to require modifying the tension tie structure or tension tie and frame structure at certain stations; and a post-modification inspection of the modified area and post-modification repetitive inspections of the unmodified area, and repair if necessary. Doing the modification would terminate the repetitive inspection requirements in the existing AD. That NPRM also proposed to reduce the compliance time

and add inspections for certain airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 58722, September 22, 2011) and the FAA's response to each comment.

Request to Revise Costs of Compliance

UPS requested that we revise the Costs of Compliance section of the NPRM (76 FR 58722, September 22, 2011). UPS explained that according to paragraph 1.G. of Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, the manpower required to accomplish the modification on all tension tie locations for UPS's Group 10 airplanes is 501 work-hours. UPS also explained that according to Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, the parts kits that are required to accomplish the modification range from $535,131 to $658,423. UPS reasoned that based on Boeing's labor estimate, a labor rate of $85 per hour, and Boeing's current pricing, the cost to accomplish the modification on each of UPS's airplanes would be approximately $701,008.

We agree to revise the Costs of Compliance section in the final rule to align with the costs specified in the service information. We have revised the work-hours appropriately.

Request to Refer to the Service Information

UPS requested that we revise paragraphs (i)(2)(i) and (i)(2)(ii)(B) of the NPRM (76 FR 58722, September 22, 2011) to, "* * * install the correct configuration * * * in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, except where Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, specifies to contact Boeing for installation instructions: Before further flight, install in accordance with instructions approved in accordance with the procedures specified in paragraph (n) of this AD." UPS explained that, while paragraphs (i)(2)(i) and (i)(2)(ii)(B) of the NPRM stipulate to install the correct configuration using a method approved in accordance with paragraph (n) of the NPRM, Figure 22 of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, provides the correct configuration for installing the tension tie attachments. UPS expressed that they are concerned with the requirement to obtain AMOC approval to install the correct configuration, as it believes that this adds undue and unnecessary burden on the operators when correct configuration data already exits.

We agree for the reasons stated by UPS to revise the final rule to require operators to install the correct configuration in accordance with Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. We have revised paragraphs (i)(2)(i) and (i)(2)(ii)(B) in this final rule accordingly.

Request To Include All Airplanes for Actions Approved as AMOCs

UPS requested that we revise paragraph (n)(4) of the NPRM (76 FR 58722, September 22, 2011) to refer to paragraph (h) of the NPRM by specifying "Certain actions required by paragraphs (g) and (h) of this AD * * *." UPS explained that while "paragraph (n)(4) of the NPRM states that certain actions required by paragraph (g) of this AD are approved as AMOCs for the requirements specified in paragraph (n)(4)(i), (n)(4)(ii), and (n)(4)(iii) of this AD," paragraph (g) of the NPRM applies only to Group 1 and Groups 3 through 6 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. UPS expresses that paragraph (n)(4)(iii) of the NPRM should apply to all affected airplanes, not just to Group 1 and Groups 3 through 6 airplanes.

We agree for the reasons stated by UPS to revise paragraph (n)(4) of the final rule to include reference to paragraph (h) of the final rule. We have revised paragraph (n)(4) of the final rule accordingly.

Requests for Approval of Previous AMOCs

UPS requested that, since the NPRM (76 FR 58722, September 22, 2011) supersedes AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), we revise the NPRM to include a new paragraph that states that AMOCs previously approved by AD 2006–01–07 should be approved as AMOCs for the requirements of paragraphs (g), (h), and (i) of the NPRM.

Boeing requested that we revise the NPRM (76 FR 58722, September 22, 2011) to read, "For airplanes not identified in Group 2 per Boeing Special Attention Service Bulletin 747–53A2502, Revision 1, dated June 17, 2011; AMOCs approved previously in accordance with AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), are approved as alternate methods of compliance with paragraph (g) of this AD." Boeing explained that Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, reduces the inspection thresholds and adds a one-time inspection for the Group 2 airplanes (Model 747–400F series airplanes). All other airplane groups fall within the requirements of the superseded AD 2006–01–07, and therefore, AMOCs provided in paragraph (f) of AD 2006–01–07 are still applicable. Boeing expressed that this provision will reduce the resource requirements of providing AMOC approvals.

We partially agree to revise this AD to allow certain AMOCs approved for AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006). We agree to allow AMOCs approved for AD 2006–01–07 for the requirements of paragraph (g) of this AD and have added paragraph (n)(5) of this AD accordingly.

We also agree to allow AMOCs approved according to AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), for the actions required by paragraph (h) of this AD, provided that the compliance times specified in paragraph (h) of this AD are met; the compliance times in paragraph (h) of this AD are from those specified in AD 2006–01–07. We have added paragraph (n)(6) of this AD. We disagree to allow AMOCs approved according to AD 2006–01–07 for the requirements of paragraph (i) of this AD, because the actions in paragraph (i) of this AD are new.

Additional Changes Made to This AD

We have revised the heading and wording of paragraph (m) of this AD; this revision has not affected the intent of that paragraph.

We have redesignated Note 2 the NPRM (76 FR 58722, September 22, 2011) as paragraph (l)(2) of this AD. We have also redesignated paragraph (l) of the NPRM as paragraph (l)(1) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 58722, September 22, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 58722, September 22, 2011).

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

Costs of Compliance

We estimate that this AD affects 86 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (required by AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)).	8 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration × $85 per hour = between $5,440 and $8,160.	$0	Between $5,440 and $8,160 per inspection cycle.	Between $467,840 and $701,760 per inspection cycle.
One-time inspection (new action for Group 2 airplanes).	6 × $85 per hour = $510	None	$510	$43,860.
Modification (new action).	Between 30 and 432 work-hours, depending on airplane configuration × $85 per hour = between $2,550 and $36,720.	Between $18,657 and $658,423.	Between $21,207 and $695,143.	Between $1,823,802 and $59,782,298.
Inspection for unmodified area (new action).	2 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration × $85 per hour = between $1,360 and $2,040.	None	Between $1,360 and $2,040, per inspection cycle.	Between $116,960 and $175,440.
Inspection for modified area (new action).	2 per tension tie location, between 8 and 12 tension tie locations per airplane, depending on airplane configuration × $85 per hour = between $1,360 and $2,040.	None	Between $1,360 and $2,040 per inspection cycles.	Between $116,960 and $175,440.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), and adding the following new AD:

2012–13–08 The Boeing Company: Amendment 39–17110; Docket No. FAA–2011–0991; Directorate Identifier 2010–NM–134–AD.

(a) Effective Date

This airworthiness directive (AD) is effective August 14, 2012.

(b) Affected ADs

This AD supersedes AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that certain airplanes have tension ties that are susceptible to widespread fatigue damage. This AD also results from reports of cracks on the forward and aft tension tie channels at station (STA) 740 and STA 760, and a determination that initial inspection compliance times need to be reduced. We are issuing this AD to prevent tension ties from becoming severed or disconnected from the frames, which could lead to rapid in-flight decompression.

(f) Compliance

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

(g) Retained Actions With Reduced Compliance Times for Certain Airplanes

This paragraph restates the requirements of paragraph (f) of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), with reduced compliance time for certain airplanes and revised service information. For Group 1, and Groups 3 through 6 airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, at the applicable time in paragraph (g)(1) or (g)(2) of this AD: Do detailed and high-frequency eddy current inspections for cracking of each affected tension tie and of the surrounding structure. If any cracking is found: Before further flight, do all applicable corrective and related investigative actions. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. Where Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010; specifies to contact Boeing for repair instructions: Before further flight, repair the area using a method approved in accordance with the procedures specified in paragraph (n) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, may be used to accomplish the actions required in this paragraph.

(1) For airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, as Groups 1, 3, and 6 airplanes: Do the first inspections before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006 (the effective date of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)), whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005, as Group 4 and 5 airplanes: Do the first inspections before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006 (the effective date of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)), whichever occurs later; and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

(h) Retained Inspection for Group 2 Airplanes With Reduced Compliance Times and Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), with reduced compliance time for certain airplanes and revised service information. For Group 2 airplanes identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010: At the applicable times specified in paragraphs (h)(1) and (h)(2) of this AD, do detailed and high-frequency eddy current inspections for cracking of each affected tension tie and of the surrounding structure, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. If any cracking is found: Before further flight, do all applicable corrective and related investigative actions. Do all actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010. Where Boeing Special Attention Service Bulletin 747–53–2502, dated April 21, 2005; or Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010; specify to contact Boeing for repair instructions: Before further flight, repair the area using a method approved in accordance with the procedures specified in paragraph (n) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, may be used to accomplish the actions required by this paragraph. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles until the modification required by paragraph (j) of this AD is accomplished.

(1) For STA 780 through 940: Before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006 (the effective date of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)), whichever occurs later.

(2) For STA 720, 740, and 760: At the earlier of the times specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Before the accumulation of 17,000 total flight cycles, or within 1,000 flight cycles after February 16, 2006 (the effective date of AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006)), whichever occurs later.

(ii) Before the accumulation of 8,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(i) New Requirement: One-Time Inspection for Group 2 Airplanes

For airplanes identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, as Group 2 airplanes: Before the accumulation of 8,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a general visual inspection for correct configuration, as identified in Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, of each affected tension tie and of the surrounding structure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(1) If all tension ties match the correct configurations specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, no further work is required by this paragraph.

(2) If any incorrect configuration is found, before further flight, do detailed and open fastener-hole high frequency eddy current inspections for cracks in the tension tie and frame, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(i) If no crack is found during the inspection required by paragraph (i)(2) of this AD: Before further flight, install the correct configuration for the tension ties at locations where the incorrect configuration was found, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, except where Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, specifies to contact Boeing for installation instructions, use a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(ii) If any crack is found during the inspection required by paragraph (i)(2) of this AD, before further flight, do the actions specified in paragraphs (i)(2)(ii)(A) and (i)(2)(ii)(B) of this AD.

(A) Repair the crack in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, except where Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(B) Install the correct configuration for the tension ties at locations where the incorrect configuration was found, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, except where Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010, specifies to contact Boeing for installation instructions: Use a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(j) Modification

Before the accumulation of 30,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the left- and right-side tension tie structure or left- and right-side tension tie and frame structure, at specified stations, in accordance with the applicable method specified in paragraph (j)(1) or (j)(2) of this AD. Accomplishment of the modification in this paragraph terminates the repetitive inspection requirements in paragraphs (g)(1), (g)(2), and (h) of this AD.

(1) For airplanes identified in Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010: Do the modification in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010.

(2) For airplanes not identified in Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010: Do the modification using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

Note 1 to paragraph (j)(2) of this AD: For airplanes identified in paragraph (j)(2) of this AD, post-modification inspection guidance may be included in an approved alternative method of compliance (AMOC) for paragraph (j)(2) of this AD.

(k) Post-Modification Inspection of the Modified Areas

For airplanes identified in paragraph (j)(1) of this AD, within 20,000 flight cycles after doing the modification required by paragraph (j) of this AD: Do an inspection for cracks of the modified areas of the left- and right-side tension tie structure and frame structure, in accordance with a method approved in accordance with the procedures specified in paragraph (n) of this AD. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(l) Post-Modification Repetitive Inspections of the Unmodified Areas

(1) For airplanes identified in paragraph (j)(1) of this AD, within 6,000 flight cycles after doing the modification required by paragraph (j) of this AD: Do a detailed inspection for cracks on the unmodified areas of the left- and right-side tension tie structure and frame structure, at certain stations, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Repeat the inspection of the unmodified areas thereafter at intervals not to exceed 6,000 flight cycles.

(2) Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010, refers to Section 51–10–02 of the Boeing 747–400F Structural Repair Manual (SRM) and Section 51–10–01 of the Boeing 747–100/200/300 SRM as additional sources of guidance for removing small cracks and fatigue damage material from the existing holes in the unmodified center section of the tension tie channels. Where those SRM sections state that ''zero-timing must only be used where specifically permitted in an SRM chapter-section-repair,'' this AD allows the zero-timing procedures specified in those SRM sections.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (j), (k), and (l)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2605, dated October 8, 2009.

(n) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Certain actions required by paragraphs (g) and (h) of this AD are approved as AMOCs for the requirements specified in paragraphs (n)(4)(i), (n)(4)(ii), and (n)(4)(iii) of this AD. All provisions of the referenced ADs specified in paragraphs (n)(4)(i), (n)(4)(ii), and (n)(4)(iii) of this AD, including applicable post-modification inspection thresholds, remain fully applicable and must be complied with.

(i) Repairs or modifications of the aft tension tie channels done in accordance with this AD are AMOCs for the repair requirements of paragraph A. of AD 84–19–01, Amendment 39–4913 (49 FR 35365, September 17, 1984); and paragraphs (a)(2) and (b)(2) of AD 94–13–06, Amendment 39–8946 (59 FR 32879, June 27, 1994).

(ii) The inspection requirements of this AD are AMOCs for the post-modification inspection requirements of paragraph B. of AD 84–19–01, Amendment 39–4913 (49 FR 35365, September 17, 1984); and paragraph (b) of AD 94–13–06, Amendment 39–8946 (59 FR 32879, June 27, 1994).

(iii) The inspection requirements of this AD are AMOCs for the inspections of Structural Significant Item (SSI) F–19A of Boeing Supplemental Structural Inspection Document D6–35022, Revision G, dated December 2000, as required by paragraphs (h) and (i) of AD 2004–07–22 R1, Amendment 39–15326 (73 FR 1052, January 7, 2008); corrected February 14, 2008 (73 FR 8589).

(5) AMOCs approved previously in accordance with AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(6) AMOCs approved previously in accordance with AD 2006–01–07, Amendment 39–14446 (71 FR 1947, January 12, 2006), are approved as AMOCs for the corresponding repairs or modifications required by paragraph (h) of this AD provided that the actions are done within the compliance times specified in paragraph (h) of this AD. Compliance times in previously approved AMOCs are not approved for paragraph (h) of this AD.

(o) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6428; fax: (425) 917–6590; email: *nathan.p.weigand@faa.gov.*

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 14, 2012.

(i) Boeing Alert Service Bulletin 747–53A2502, Revision 1, dated June 17, 2010.

(ii) Boeing Alert Service Bulletin 747–53A2605, Revision 1, dated May 27, 2010.

(4) The following service info was approved for IBR on February 16, 2006 (71 FR 1947, January 12, 2006).

(i) Boeing Special Attention Service Bulletin 747–53A2502, dated April 21, 2005.

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

(6) You may review copies of the 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.

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

Issued in Renton, Washington, on June 19, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15894 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0040; Directorate Identifier 2011–NM–121–AD; Amendment 39–17108; AD 2012–13–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; all Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model 300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This AD was prompted by reports of an inoperative fire shut-off valve (FSOV) as a result of damage due to over-length of the bonding lead. This AD requires a one-time detailed inspection for length of the FSOV bonding leads and for contact or chafing of the wires, and corrective actions, if necessary. We are issuing this AD to detect and correct contact or chafing of wires and bonding leads which, if not detected could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire.

DATES: This AD becomes effective August 14, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 14, 2012.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 6, 2012 (77 FR 5728). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During a scheduled maintenance check, one operator reported inoperative FSOV [fire shut-off valve]. Investigations showed damage at wire located between engine 2 Hydraulic FSOV and wing rear spar, in the zones 575/675, and at bonding lead, located between wing Rib 7A and Rib 8 below Hydraulic Pressure Lines.
>
> Similar inspections on different aeroplanes have shown that one of the causes of damage, is the contact between bonding lead and the harness, due to over length of the bonding lead.
>
> As the affected wire is not powered during normal operation, no defect had been detected. The defect was detected when a test was performed on the FSOV during maintenance check by the operator.
>
> This condition, in the scope of published FAA SFAR88 and JAA Internal Policy INT/POL/25/12, is considered to be a potential source of sparks in the wing trailing edge area and if not detected, could lead to an uncontrolled engine fire.
>
> For the reasons stated above, this [EASA] AD requires a one-time [detailed] inspection of the wires [for contact or chafing] located between LH/RH engines Hydraulic FSOV and wing rear spar in the zones 575/675, and the bonding lead [for length] that is located between Rib 7A and Rib 8 below Hydraulic Pressure Lines, and corrective actions [repair wires or replace bonding leads] depending on findings.

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

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received.

Request To Extend the Compliance Time

UPS Airlines requested that we extend the compliance time from 30 to 40 months after the effective date of the AD. The commenter stated the extension is a better fit within the operator's heavy maintenance program because the extended compliance time is more conducive to schedule-required aircraft ground time, labor, and parts acquisition. The commenter stated that the compliance time is too restrictive.

We do not agree with the commenter's request to extend the compliance time. In developing the proposed compliance time, we determined that the compliance time of 4,500 flight hours or 30 months after the effective date of the AD, whichever occurs first, is appropriate when considering the safety implications, the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during heavy maintenance checks, and the availability of required replacement parts. In addition, our compliance time corresponds with the compliance time of the parallel AD issued by European Aviation Safety Agency (EASA). We have not changed the AD in this regard.

Explanation of Change to AD

We have changed paragraph (i) of this AD to include a compliance time of ''before further flight'' for the wire repair. This compliance time was required by EASA AD 2011–0084, dated May 24, 2011, and was inadvertently omitted from the NPRM (77 FR 5728, February 6, 2012).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 5728, February 6, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 5728, February 6, 2012).

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

Costs of Compliance

We estimate that this AD will affect 125 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $85,000, or $680 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $50, for a cost of $135 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 5728, February 6, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–13–06 Airbus: Amendment 39–17108. Docket No. FAA–2012–0040; Directorate Identifier 2011–NM–121–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 14, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to airplanes specified in paragraphs (c)(1), (c)(2) and (c)(3) of this AD; certificated in any category; all certificated models; all serial numbers.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622 airplanes.

(3) Airbus Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of an inoperative fire shut-off valve (FSOV) as a result of damage due to over-length of the bonding lead. We are issuing this AD to detect and correct contact or chafing of wires and bonding leads which, if not detected, could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire.

(f) Compliance

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

(g) Inspection of the FSOV Bonding Leads

Within 4,500 flight hours or 30 months after the effective date of this AD, whichever occurs first: Do a one-time detailed inspection for length of the FSOV bonding leads, and for contact or chafing of the wires located on left hand (LH) side and right-hand (RH) side of the wing rear spar, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(h) Corrective Action for FSOV Bonding Leads

If, during the inspection required by paragraph (g) of this AD, the length of the bonding lead(s) is more than 80 mm (3.15 inches), before further flight, replace the bonding lead(s) with a new bonding lead having a length equal to 80 mm (3.15 inches), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(i) Repair of the Wires of the LH and RH Sides

If, during the inspection required by paragraph (g) of this AD, contact(s) or chafing(s) of the wires is found, repair the wires, before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010 (for Model A300 series airplanes); or Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010 (for Model A300–600 series airplanes).

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install any bonding lead longer than 80 mm (3.15 inches), located between LH/RH engine hydraulic FSOV and wing rear spar in the zones 575/675 on any airplane.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2125; fax 425–227–1149.

(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.

(l) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0084, dated May 24, 2011, and the service information identified in paragraphs (l)(1) and (l)(2) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A300–24–0106, dated July 9, 2010.

(2) Airbus Mandatory Service Bulletin A300–24–6108, dated July 9, 2010.

(m) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A300–24–0106, excluding Appendix 01, and including Appendix 2, dated July 9, 2010.

(ii) Airbus Mandatory Service Bulletin A300–24–6108, excluding Appendix 01 and including Appendix 2, dated July 9, 2010.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the 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.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 21, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15897 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0456; Airspace Docket No. 12–AEA–9]

Amendment of Class D and Class E Airspace; Lakehurst, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action changes the name of the airport associated with the Class D and Class E airspace at Lakehurst, NJ. The airport's name is being changed to Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst). The FAAs Aeronautical Products office requested the change to reflect the current airport name.

DATES: Effective date 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 changes the name of the airport associated with the Class D airspace and Class E airspace designated as an extension to a Class D airspace, at Lakehurst, NJ. The airport name is changed from Lakehurst Naval Air Experimental Center Airport/Maxfield Field to Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst) to be in concert with the FAAs aeronautical database. Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D airspace, and Class E airspace designations are published in Paragraph 5000 and 6004, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for the Lakehurst, NJ, Class D and E airspace area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Final Rule

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA NJ D Lakehurst, NJ [Amended]

Lakehurst Naval Support Activity/Maxfield Field, NJ (Joint Base McGuire-Dix-Lakehurst)
(Lat. 40°02′00″ N., long. 74°21′13″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of the Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst). This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a class D surface area.

* * * * *

AEA NJ E4 Lakehurst, NJ [Amended]

Lakehurst Naval Support Activity/Maxfield Field, NJ (Joint Base McGuire-Dix-Lakehurst)
(Lat. 40°02′00″ N., long. 74°21′13″ W.)
Lakehurst (Navy) NDB
(Lat. 40°02′41″ N., long. 74°20′09″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the 050° bearing from the Lakehurst (Navy) NDB extending from the 4.2-mile radius of the Lakehurst Naval Support Activity/Maxfield Field (Joint Base McGuire-Dix-Lakehurst) to 7.4 miles northeast of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on June 29, 2012.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–16674 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1211; Airspace Docket No. 11–ASO–40]

Amendment of Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Memphis, TN area, as the West Memphis Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Memphis International Airport. This action also removes West Memphis Municipal Airport, West Memphis, from the existing airspace surrounding Memphis International Airport, Memphis, TN. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also makes a minor adjustment to the geographic coordinates of General DeWitt Spain Airport and makes a minor correction to the regulatory text.

DATES: Effective 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On March 26, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Memphis, TN (77 FR 17360). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. Except for a minor clerical change in the regulatory text correcting 'NDB' to ''Airport'', this rule is the same as published in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Memphis, TN. Airspace reconfiguration is necessary due to the decommissioning of the West Memphis NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. Also, West Memphis Municipal Airport, West Memphis, AR, is removed from the Memphis, TN, airspace designation to accommodate the separation of existing Class E airspace surrounding Memphis International Airport, Memphis, TN. The establishment of the new designator for the Class E airspace area surrounding West Memphis Municipal Airport, West Memphis, AR, is simultaneously coordinated with this action. This action also adjusts the geographic coordinates of General DeWitt Spain Airport to be in concert with the FAAs aeronautical database, and corrects 'NDB' to read 'Airport' in the regulatory text.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in Memphis, TN.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Memphis, TN [Amended]

Memphis International Airport, TN
(Lat. 35°02′33″ N., long. 89°58′36″ W.)
Olive Branch, MS, Olive Branch Airport
(Lat. 34°58′44″ N., long. 89°47′13″ W.)
General DeWitt Spain Airport

(Lat. 35°12′03″ N., long. 90°03′14″ W.)
Elvis NDB
(Lat. 35°03′41″ N., long. 90°04′18″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, Olive Branch, MS, and within 4 miles west and 8 miles east of the 017° bearing and 4 miles west and 8 miles east of the 170° bearing from Olive Branch Airport extending from the 7.5-mile radius to 16 miles northeast and south of the airport, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

Issued in College Park, Georgia, on June 27, 2012.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–16672 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0286; Airspace Docket No. 11–AWP–22]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Southwestern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the Federal Register on June 14, 2012, that establishes two RNAV routes in the southwest United States. This action corrects the latitude/longitude coordinates for the NOCHI waypoint (WP) as appears in the description of RNAV route T–310.

DATES: Effective date 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2012, the FAA published a final rule in the **Federal Register** establishing two RNAV routes, T–306 and T–310, in the southwestern United States (77 FR 35618). Subsequent to publication, an error was found in the latitude/longitude coordinates for the NOCHI waypoint (WP) in the description of T–310. The NOCHI WP also appears in the description of T–306, but the coordinates are correct in that description.

Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the coordinates for the NOCHI waypoint as published in the **Federal Register** on June 14, 2012 (77 FR 35618) (FR Doc. 2012–14406) for RNAV route T–310, is corrected under the description as follows:

Paragraph 6011—United States Area Navigation Routes

* * * * *

T–310 [Corrected]

■ On page 35619, line 23, remove ''NOCHI, AZ WP (lat. 31°59′58″ N., long. 108°30′51″ W.)'' and insert ''NOCHI, AZ WP (Lat. 32°02′00″ N., long. 109°45′30″ W.)

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

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–16696 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0129; Airspace Docket No. 12–AWA–3]

RIN 2120–AA66

Revocation and Modification of Multiple Domestic, Alaskan, and Hawaiian Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes eighteen Domestic and Alaskan compulsory reporting points defined by navigation aids previously decommissioned, removed, or shutdown and taken out of the FAA aeronautical database as compulsory reporting points. Additionally, this action also requires changes to the name of four navigation aids that define associated compulsory reporting points. The FAA is removing the outdated Part 71 compulsory reporting points since they are no longer valid, and amending those Part 71 compulsory reporting points that require name changes, to be consistent with the FAA's aeronautical database.

DATES: Effective date 0901 UTC July 10, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

After a recent review of aeronautical data, the National Flight Data Center (NFDC) identified eighteen compulsory reporting points, defined by navigation aids, listed in FAA Order (FAAO) 7400.9, Airspace Designations and Reporting Points that are no longer valid and are not contained in the FAA's aeronautical database as reporting points. The reporting points included five Domestic Reporting Points, ten Alaskan Low Altitude Reporting Points, and three Alaskan High Altitude Reporting Points. Additionally, NFDC identified four other reporting points that require updates to match the current navigation aid name that defines the reporting point, as reflected in the aeronautical database. These include two Alaskan Low Altitude Reporting Points, one Alaskan High Altitude Reporting Point, and one Hawaiian Reporting Point.

No regulatory actions were taken when the navigation aids, which define these compulsory reporting points, were removed or renamed in the FAA aeronautical database. To overcome confusion and remove flight safety issues associated with publishing outdated compulsory reporting point information, the FAA is removing

eighteen reporting points, from Part 71, and FAAO 7400.9. Also, the FAA is updating the names of four reporting points, in Part 71, and FAAO 7400.9. Accordingly, since this is an administrative change and simply brings current regulations in concert with the FAA's aeronautical database, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing five Domestic Reporting Points, ten Alaskan Low Altitude Reporting Points, and three Alaskan High Altitude Reporting Points. Specifically, the FAA removes Blue Ridge, TX, Gunnison, CO, Lewistown, MT, and Ukiah, CA, Domestic Low Altitude Reporting Points; the Ramey, PR, listed in Other Domestic Reporting Points; Adak NDB, AK, Barter Island NDB, AK, Farewell NDB, AK, Hinchinbrook NDB, AK, Julius NDB, AK, Oliktok NDB, AK, Puntilla Lake NDB, AK, Shemya NDB, AK, Umiat NDB, AK, and Wessels NDB, AK, Alaskan Low Altitude Reporting Points; and Adak NDB, AK, Barter Island NDB, AK, and Prudhoe Bay NDB, AK, Alaskan High Altitude Reporting Points.

This action also amends 14 CFR part 71 by updating the names of two Alaskan low altitude reporting points, one Alaskan high altitude reporting point, and one Hawaiian reporting point to match the navigation aid names that define the reporting points. Specifically, the FAA amends ''Chandalar NDB, AK,'' to ''Chandalar Lake, AK,'' and ''Glenallen NDB, AK,'' to ''Glennallen, AK,'' in the Alaskan Low Altitude Reporting Points; ''St Paul NDB, AK,'' to ''St Paul Island, AK,'' in the Alaskan High Altitude Reporting Points; and ''Upolu, HI,'' to ''Upolu Point, HI,'' in the Hawaiian Reporting Points.

Domestic Low Altitude Reporting Points, Other Domestic Reporting Points designated at all altitudes, Alaskan Low Altitude Reporting Points, Alaskan High Altitude Reporting Points, and Hawaiian Reporting Points are listed in paragraph 7001, 7003, 7004, 7005 and 7006, respectively of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The reporting points listed in this document will be revised subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes Domestic, Alaskan, and Hawaiian Reporting Points contained in the NAS.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, signed August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 7001 Domestic low altitude reporting points.

* * * * *

Blue Ridge, TX [Removed]

* * * * *

Gunnison, CO [Removed]

* * * * *

Lewistown, MT [Removed]

* * * * *

Ukiah, CA [Removed]

* * * * *

Paragraph 7003 Other domestic reporting points.

* * * * *

Ramey, PR [Removed]

* * * * *

Paragraph 7004 Alaskan low altitude reporting points.

Adak NDB, AK [Removed]

* * * * *

Barter Island NDB, AK [Removed]

* * * * *

Chandalar NDB, AK [Removed]

Chandalar Lake, AK [New]

* * * * *

Farewell NDB, AK [Removed]

* * * * *

Glenallen NDB, AK [Removed]

Glennallen, AK [New]

* * * * *

Hinchinbrook NDB, AK [Removed]

* * * * *

Julius NDB, AK [Removed]

* * * * *

Oliktok NDB, AK [Removed]

* * * * *

Puntilla Lake NDB, AK [Removed]

* * * * *

Shemya NDB, AK [Removed]

* * * * *

Umiat NDB, AK [Removed]

* * * * *

Wessels NDB, AK [Removed]

* * * * *

Paragraph 7005 Alaskan high altitude reporting points.

Adak NDB, AK [Removed]

* * * * *

Barter Island NDB, AK [Removed]

* * * * *

Prudhoe Bay NDB, AK [Removed]

* * * * *

St Paul NDB, AK [Removed]

St Paul Island, AK [New]

* * * * *

Paragraph 7006 Hawaiian reporting points.

* * * * *

Upolu, HI [Removed]

Upolu Point, HI [New]

Issued in Washington, DC, June 28, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–16698 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1457; Airspace Docket No. 11–ASO–47]

Revocation of Class D Airspace; Andalusia, AL; and Amendment of Class E Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D Airspace at Andalusia, AL, as the Air Traffic Control Tower at South Alabama Regional Airport at Bill Benton Field has closed, and amends Class E Airspace at Fort Rucker, AL, by recognizing the airport's name change to South Alabama Regional Airport at Bill Benton Field. This action also updates the geographic coordinates of the three listed Class E airports. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On April 10, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to remove Class D airspace at South Alabama Regional Airport at Bill Benton Field (formerly Andalusia-Opp Airport), Andalusia, AL, due to the closing of the air traffic control tower; amend Class E airspace at Fort Rucker, AL, by changing the airport name formerly known as Andalusia-Opp Airport; and adjust the geographic coordinates of the above airports listed in the Class (77 FR 21510) Docket No. FAA–2011–1457. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D and Class E airspace designations are published in paragraph 6002, 6004, and 6005 respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Except for a few editorial changes, this rule is the same as published in the NPRM of April 10, 2012.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes Class D surface airspace at South Alabama Regional Airport at Bill Benton Field (formerly Andalusia-Opp Airport), Andalusia, AL, as the air traffic control tower has closed. The Class E airspace area extending upward from 700 feet above the surface at Fort Rucker, AL, is amended by recognizing the airport's name change from Andalusia-Opp Airport to South Alabama Regional Airport at Bill Benton Field. This action also updates the geographic coordinates of the above airport; Cairns AAF, Ft. Rucker, AL; and Florala Municipal, AL, to be in concert with the FAAs aeronautical database.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Andalusia, AL, and amends controlled airspace at Fort Rucker, AL.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO AL D Andalusia, AL [Removed]

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO AL E5 Fort Rucker, AL [Amended]

Fort Rucker, Cairns AAF, AL
(Lat. 31°16′33″ N., long. 85°42′48″ W.)
Andalusia, South Alabama Regional Airport at Bill Benton Field, AL
(Lat. 31°18′30″ N., long. 86°23′32″ W.)
Florala Municipal Airport, AL
(Lat. 31°02′33″ N., long. 86°18′42″ W.)

That airspace extending upward from 700 feet or more above the surface within the area bounded by a line beginning at lat. 31°38′01″ N., long. 86°23′30″ W.; to lat. 31°45′01″ N., long. 85°38′00″ W.; to lat. 31°17′01″ N., long. 85°26′00″ W.; thence to lat. 31°04′01″ N., long. 85°52′00″ W.; to lat. 31°03′02″ N., long. 86°11′04″ W.; to and clockwise along the arc of a 6.5-mile radius circle of Florala Municipal Airport to lat. 31°02′14″ N., long. 86°26′10″ W.; thence to the point of beginning, and within a 7-mile radius of South Alabama Regional Airport at Bill Benton Field.

Issued in College Park, Georgia, on June 21, 2012.

Gerald E. Lynch,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–16429 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–2009–0140; Amdt. No. 129–49]

RIN 2120–AJ45

Operations Specifications; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; OMB approval of information collection.

SUMMARY: This document notifies the public of the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, ''Operations Specifications,'' which was published on February 10, 2011.

DATES: The rule published on February 10, 2011, became effective on April 11, 2011. However, because it contained new information collection requirements, compliance with the information collection provisions contained in § 129.7 was not required until they were approved. This document announces that OMB approval was received on April 5. 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Darcy D. Reed, International Programs and Policy Division, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; email: *Darcy.D.Reed@faa.gov;* Telephone: 202–385–8078. For legal questions contact Lorna John, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *Lorna.John@faa.gov;* Telephone: 202–267–3921.

SUPPLEMENTARY INFORMATION: On February 10, 2011, the final rule, ''Operations Specifications'' was published in the **Federal Register** (76 FR 7482). In that rule, the FAA clarified and standardized the rules for applications by foreign air carriers and foreign persons for part 129 operations specifications and established new standards for amendment, suspension, and termination of those operations specifications.

In the **DATES** section of the final rule, the FAA noted that affected parties were not required to comply with the new information collection requirements in § 129.7 until OMB approved the FAA's request to collect the information. Section 129.7 includes new provisions governing the application, issuance, and denial of operations specifications. That information collection requirement had not been approved by OMB at the time of publication.

In accordance with the Paperwork Reduction Act, the FAA submitted a copy of the new information collection requirements to OMB for its review. OMB approved the collection on April 5, 2012, and assigned the information collection OMB Control Number 2120–0749, which expires on April 30, 2013.

This document is being published to inform affected parties of the approval, and to announce that as of April 5, 2012, affected parties are required to comply with the new information collection requirements in § 129.7.

Issued in Washington, DC, on July 2, 2012.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–16840 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 748, 750, 752, and 760

Export Administration Regulations

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2012, make the following corrections:

■ 1. On page 248, in § 740.1, correctly revise the heading of paragraph (d) to read ''Shippers Export Declaration or Automated Export System Record''.

■ 2. On page 321, in § 742.15, move the note to introductory paragraph (b) from under (b)(3) to its correct location above (b)(1), and add the following note under the introductory paragraph of (b)(3):

§ 742.15 Encryption items.

* * * * *

(b) * * *

(3) * * *

Note to introductory text of paragraph (b)(3): Once a mass market classification request is accepted in SNAP–R, you may export and reexport the encryption commodity or software under License Exception ENC as ECCN 5A002 or 5D002, whichever is applicable, to any end-user located or headquartered in a country listed in supplement No. 3 to part 740 as authorized by § 740.17(b) of the EAR, while the mass market classification request is pending review with BIS.

* * * * *

■ 3. In Supplement No. 2 to part 742:

■ A. On page 332, remove paragraphs (c)(10)(i)(A) and (B), and

■ B. On page 336, add (c)(25)(i) to read as set forth below, and

■ C. On page 336, remove paragraphs (c)(27)(i)(A) and (B).

Supplement No. 2 to Part 742—Anti-Terrorism Controls: North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(c) * * *

* * * * *

(25) * * *

(i) A license is required for the following telecommunications equipment: (A) Radio relay systems or equipment operating at a frequency

equal to or greater than 19.7 GHz or ''spectral efficiency'' greater than 3 bit/s/Hz; (B) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm; (C) ''Telecommunications transmission systems'' or equipment with a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mb/s.

* * * * *

■ 4. On page 422, in § 748.5, in paragraph (b), add the third sentence to read ''Designation of another party to receive the license does not alter the responsibilities of the applicant, licensee or exporter.''

■ 5. On page 446, in Supplement No. 2 to part 748, in paragraph (o)(3)(i), correct ''E:2'' to read ''E:1''.

■ 6. On page 466, in § 750.7, in paragraph (c)(1)(ii), correct ''quality'' to read ''quantity'' and correct ''tolerance'' to read ''tolerances''.

■ 7. On page 486, in Supplement No. 1 to part 752, in block 11, correct ''SF ##'' to read ''SF #''.

■ 8. On page 487, in Supplement No. 3 to part 752, in block 6, correct ''BIS–748P–B'' to read ''BIS–748P–A''.

■ 9. On page 568, in Supplement No. 7 to part 760, add the fourth paragraph to read as follows:

Supplement No. 7 to Part 760—Interpretation

* * * * *

The United States person may also provide certain services in advance of the unilateral selection by the boycotting country, such as the compilation of lists of qualified suppliers, so long as such services are customary to the type of business the United States person is engaged in, and the services rendered are completely non-exclusionary in character (i.e., the list of qualified suppliers would have to include the supplier whose goods had previously been rejected by the boycotting country, if they were fully qualified). See § 760.2(a)(6) of this part for a discussion of the requirements for the provision of these services.

* * * * *

[FR Doc. 2012–16905 Filed 7–9–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1983

[Docket Number: OSHA–2010–0006]

RIN 1218–AC47

Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing the employee protection (whistleblower) provisions of the Consumer Product Safety Improvement Act of 2008 (CPSIA). An interim final rule governing these provisions and request for public comment was published in the **Federal Register** on August 31, 2010. Three comments were received. This rule responds to those comments and establishes the final procedures and time frames for the handling of retaliation complaints under CPSIA, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor), and judicial review of the Secretary's final decision.

DATES: This final rule is effective on July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Sandra Dillon, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. This **Federal Register** document is available in alternative formats. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Product Safety Improvement Act of 2008 (CPSIA or the Act), Public Law 110–314, 122 Stat. 3016, was enacted on August 14, 2008. Section 219 of the Act, codified at 15 U.S.C. 2087, provides protection to employees against retaliation by a manufacturer, private labeler, distributor, or retailer, because they provided to their employer, the Federal Government or the attorney general of a state, information relating to any violation of, or any act or omission the employees reasonably believe to be a violation of, any provision of an Act enforced by the Consumer Product Safety Commission (Commission), or any order, rule, regulation, standard, or ban under any such Act. The statutes enforced by the Commission include the Consumer Product Safety Act (CPSA), as amended by the CPSIA (15 U.S.C. 2051 *et seq.*), the Children's Gasoline Burn Prevention Act (Pub. L. 110–278, 122 Stat. 2602 (2008)), the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*), the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*), and the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. 8001 *et seq.*). These rules establish procedures for the handling of whistleblower complaints under CPSIA.

II. Summary of Statutory Procedures

CPSIA's whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged retaliation, a complaint with the Secretary of Labor (Secretary).[1] Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the Act (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the complainant and respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

[1] The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of CPSIA. Responsibility for receiving and investigating complaints under CPSIA also has been delegated to the Assistant Secretary for Occupational Safety and Health (Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012)). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB (Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010)).

The Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that activity.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of those findings, along with a preliminary order that requires the respondent to, where appropriate: take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an ALJ. The filing of objections under CPSIA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, CPSIA requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer a reasonable attorney's fee, not exceeding $1,000, if the Secretary finds that the complaint is frivolous or has been brought in bad faith.

Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

CPSIA permits the employee to seek de novo review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination. The court will have jurisdiction over the action without regard to the amount in controversy, and the case will be tried before a jury at the request of either party.

III. Summary of Regulations and Rulemaking Proceedings

On August 31, 2010, OSHA published in the **Federal Register** an interim final rule promulgating rules governing the employee protection (whistleblower) provisions of CPSIA. 75 FR 53533. In addition to promulgating the interim final rule, OSHA included a request for public comment on the interim rules by November 1, 2010.

In response, two organizations and one individual filed comments with the agency within the public comment period. Comments were received from the National Whistleblower Center (NWC); Government Accountability Project (GAP); and Todd Miller.

OSHA has reviewed and considered the comments. The following discussion addresses the comments and OSHA's responses in the order of the provisions of the rule.

General Comment

Mr. Todd Miller commented generally that the regulations do not provide a means for redress where OSHA does not meet the timelines provided for in the statute. Courts and the ARB have long recognized that the statutory timelines provided in the whistleblower statutes are directory. Failure to complete the investigation or issue a final decision within the statutory time frame does not deprive the Secretary of jurisdiction over a whistleblower complaint. *See, e.g., Passaic Valley Sewerage Comm'rs* v. *U.S. Dep't of Labor,* 992 F.2d 474, 477 n.7 (3d Cir. 1993); *Roadway Express, Inc.* v. *Dole,* 929 F.2d 1060, 1066 (5th Cir. 1991); *Lewis* v. *Metropolitan Transp. Authority, New York,* ARB No. 11–070, 2011 WL 3882486, at *2 (ARB Aug. 8, 2011); *Welch* v. *Cardinal Bankshares,* ARB No. 04–054, 2004 WL 5030301 (ARB May 13, 2004). The Secretary is cognizant of CPSIA's statutory directives regarding completion of the OSHA investigation and administrative proceedings and the need to resolve whistleblower complaints expeditiously. However, in those instances where the agency cannot complete the administrative proceedings within the statutory timeframes, CPSIA's ''kick-out'' provision—which allows a complainant to file a complaint for de novo review in Federal district court if the Secretary has not issued a final decision within 210 days of the filing of the complaint, or within 90 days of receiving a written determination—affords the complainant an alternative avenue for resolution of the whistleblower complaint.

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1983.100 Purpose and Scope

This section describes the purpose of the regulations implementing CPSIA and provides an overview of the procedures covered by these regulations. No comments were received on this section and no substantive changes were made to it.

Section 1983.101 Definitions

This section includes general definitions from CPSA, which are applicable to the whistleblower provisions of CPSIA, including a definition of the term ''consumer product.'' *See* 15 U.S.C. 2052(a)(5). The CPSA defines ''distributor'' as ''a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.'' 15 U.S.C. 2052(a)(8). The CPSA defines ''manufactured'' as ''to manufacture, produce, or assemble,'' and defines ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(10) and (11), respectively. ''Private labeler'' is defined by the CPSA as ''an owner of a brand or trademark on the label of a consumer product which bears a private label.'' 15 U.S.C. 2052(a)(12)(A). Section 2052(a)(12)(B) further provides that a ''consumer product bears a private label if (i) The product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the

product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.'' 15 U.S.C. 2052(a)(12)(B). The CPSA defines ''retailer'' as ''a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.'' 15 U.S.C. 2052(a)(13). No comments were received on this section and no substantive changes were made to the definitions section.

Section 1983.102 Obligations and Prohibited Acts

This section describes the activities that are protected under CPSIA, and the conduct that is prohibited in response to any protected activities. Under CPSIA, an employer may not retaliate against an employee because the employee ''provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of [CPSA, as amended by CPSIA] or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.'' 15 U.S.C. 2087(a)(1). CPSIA also protects employees who testify, assist or participate in proceedings concerning such violations. 15 U.S.C. 2087(a)(2) and (3). Finally, CPSIA prohibits retaliation because an employee ''objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of [CPSA, as amended by CPSIA] or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.'' 15 U.S.C. 2087(a)(4).

In order to have a ''reasonable belief'' under CPSIA, a complainant must have both a subjective, good faith belief and an objectively reasonable belief that the complained-of conduct violates one of the listed categories of law. *See Sylvester* v. *Parexel Int'l LLC,* ARB No. 07–123, 2011 WL 2165854, at *11–12 (ARB May 25, 2011) (discussing the reasonable belief standard under analogous language in the Sarbanes-Oxley Act (SOX) whistleblower provision, 18 U.S.C. 1514A). The requirement that the complainant have a subjective, good faith belief is satisfied so long as the complainant actually believed that the conduct complained of violated the relevant law. *See id.* The ''reasonableness'' of a complainant's belief is typically determined ''based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.'' *Id.* at *12 (internal quotation marks and citation omitted). However, the complainant need not show that the conduct complained of constituted an actual violation of law. Pursuant to this standard, an employee's whistleblower activity is protected where it is based on a reasonable, but mistaken, belief that a violation of the relevant law has occurred. *Id.* at *13.

Section 1983.102(c) reflects the CPSIA mandate that anti-retaliation protections are not available to employees who deliberately cause a violation of any requirement relating to any violation or alleged violation of any order, regulation, or standard under the Acts enforced by the Commission. 15 U.S.C. 2087(b)(7)(D). For purposes of section 1983.102(c), the ARB has interpreted the phrase ''deliberate violations'' for the purpose of denying protection to an employee under the Energy Reorganization Act's (ERA) similar provision as including an element of willfulness. *See Fields* v. *U.S. Dep't of Labor Admin. Review Bd.,* 173 F.3d 811, 814 (11th Cir. 1999) (petitioners knowingly conducted unauthorized and potentially dangerous experiments). No comments were received on this section and no changes have been made to it.

Section 1983.103 Filing of Retaliation Complaint

This section explains the requirements for filing a retaliation complaint under CPSIA. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Emp't Opportunity Comm'n* v. *United Parcel Serv., Inc.,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under CPSIA need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

OSHA notes that a complaint of retaliation filed with OSHA under CPSIA is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *See Sylvester* v. *Parexel Int'l, Inc.,* ARB Case No. 07–123, 2011 WL 2165854, at *9–10 (ARB May 26, 2011) (holding whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts the agency to the existence of the alleged retaliation and the complainant's desire that the agency investigate the complaint. Upon the filing of a complaint with OSHA, the Assistant Secretary is to determine whether ''the complaint, supplemented as appropriate by interviews of the complainant'' alleges ''the existence of facts and evidence to make a prima facie showing.'' 29 CFR 1983.104(e). As explained in section 1983.104(e), if the complaint, supplemented as appropriate, contains a prima facie allegation, and the respondent does not show clear and convincing evidence that it would have taken the same action in the absence of the alleged protected activity, OSHA conducts an investigation to determine whether there is reasonable cause to believe that retaliation has occurred. *See* 15 U.S.C. 2087(b)(2), 29 CFR 1983.104(e).

GAP expressed support for sections 1983.103(b) (nature of filing) and (d) (time for filing) and commented that these sections improved protection for whistleblowers. GAP also asked that the text of section 1983.103(d) clarify that the 180-day statute of limitations for filing a complaint under CPSIA does not begin to run until an employee becomes aware of an alleged discriminatory act. Consistent with the rules under other whistleblower statutes administered by the agency, OSHA has clarified in section 1983.103(d) that the statute of limitations under CPSIA may be tolled for reasons warranted by applicable case law and made other minor clarifying changes.

Section 1983.104 Investigation

This section describes the procedures that apply to the investigation of complaints under CPSIA. Paragraph (a) of this section outlines the procedures for notifying the parties and the Consumer Product Safety Commission of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) specifies that throughout the investigation the agency will provide to the complainant (or the complainant's

legal counsel if the complainant is represented by counsel) a copy of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint and the complainant will have an opportunity to respond to those submissions. Before providing such materials to the complainant, the agency will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. Paragraph (d) of this section discusses confidentiality of information provided during investigations. Paragraph (e) of this section sets forth CPSIA's statutory burdens of proof. Paragraph (f) describes the procedures the Assistant Secretary will follow prior to the issuance of findings and a preliminary order when the Assistant Secretary has reasonable cause to believe that a violation has occurred.

The statute requires that a complainant make an initial prima facie showing that protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. The complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place shortly after protected activity, giving rise to the inference that it was a contributing factor in the adverse action.

If the complainant does not make the required prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the ERA, which is the same as that under CPSIA, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under CPSIA and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statutory burdens of proof require an employee to prove that the alleged protected activity was a ''contributing factor'' in the alleged adverse action. If the employee proves that the alleged protected activity was a contributing factor in the adverse action, the employer, to escape liability, must prove by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (internal quotation marks, emphasis and citation omitted) (discussing the Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)). In proving that protected activity was a contributing factor in the adverse action, "'a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,'" because a complainant alternatively can prevail by showing that the respondent's "'reason, while true, is only one of the reasons for its conduct,'" and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (quoting *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the SOX whistleblower provision), *aff'd sub nom. Klopfenstein* v. *Admin. Review Bd., U.S. Dep't of Labor,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

CPSIA's burdens of proof do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. CPSIA simply provides that the Secretary may find a violation only ''if the complainant demonstrates'' that protected activity was a contributing factor in the alleged adverse action. *See* 15 U.S.C. 2087(b)(2)(B)(iii). It is the Secretary's position that the complainant must prove by a ''preponderance of the evidence'' that his or her protected activity contributed to the adverse action; otherwise the burden never shifts to the employer to establish its defense by ''clear and convincing evidence.'' *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) (''The term 'demonstrates' [under identical language in another whistleblower provision] means to prove by a preponderance of the evidence.''). Once the complainant establishes that the protected activity was a contributing factor in the adverse action, the employer can escape liability only by proving by clear and convincing evidence that it would have taken the same action even in the absence of the prohibited rationale. The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard.

NWC and GAP commented on the provisions in section 1983.104. NWC suggested that the phrase ''other applicable confidentiality laws'' be replaced with more specific language describing the confidentiality laws that might apply to a respondent's answer. NWC also suggested that OSHA provide a copy of the response to the complainant, and give the complainant an opportunity to respond. NWC noted that to conduct a full and fair investigation, OSHA needs to obtain the available, responsive information from both parties. If one party does not have the information submitted by the other, NWC explained, that party cannot help the investigation by providing available information to shed light on the matter.

GAP commented that while it was pleased with the provisions in § 1983.104 providing copies of respondent's submissions to complainants and protecting witness confidentiality, it was concerned that the procedures under § 1983.104(f) ''disenfranchise[d] the victim, giving only one side of the dispute the chance to participate in the most significant step of the process'' and that ''[a]t a minimum, this procedural favoritism means there will not be an even playing field in the administrative hearing.'' GAP advocated removing § 1983.104(f).

OSHA agrees with NWC and GAP that the input of both parties in the investigation is important to ensuring that OSHA reaches the proper outcome during its investigation. To that end, in response to the comments, the procedures under CPSIA have been revised to contain the following safeguards aimed at ensuring that complainants and respondents have equal access to information during the course of the OSHA investigation:

- Section 1983.104(a) has been revised to more closely mirror CPSIA's statutory requirement in 15 U.S.C. 2087(b)(1), that after receiving a complaint, the Secretary shall notify the respondent of the filing of the complaint, of the allegations contained

in the complaint, and of the substance of the evidence supporting the complaint.

- Section 1983.104(b) of the final rule has been revised to implement CPSIA's statutory requirement in 15 U.S.C. 2087(b)(2), that after receiving a complaint, the Secretary shall afford the complainant, as well as the respondent, the opportunity to submit a written response to the complaint, meet with a representative of the Secretary and present statements from witnesses;
- Section 1983.104(c) continues to provide that, throughout the investigation, the agency will provide the complainant (or the complainant's legal counsel if the complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint, redacted of confidential information as necessary. The final rule also specifies that the complainant will have an opportunity to respond to such submissions; and
- Section 1983.104(f) of the final rule provides that the complainant will also receive a copy of the materials that must be provided to the respondent under that paragraph.

Regarding NWC's suggestion that OSHA provide more specific information about the confidentiality laws that may protect portions of the information submitted by a respondent, OSHA anticipates that the vast majority of respondent submissions will not be subject to any confidentiality laws. However, in addition to the Privacy Act, a variety of confidentiality provisions may protect information submitted during the course of an investigation. For example, a respondent may submit information that the respondent identifies as confidential commercial or financial information exempt from disclosure under the Freedom of Information Act (FOIA). OSHA's procedures for handling information identified as confidential during an investigation are explained in OSHA's Whistleblower Investigations Manual available at: *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=5061.*

With regard to GAP's comment that § 1983.104(f) should be removed, OSHA notes that the purpose of § 1983.104(f) is to ensure compliance with the Supreme Court's ruling in *Brock* v. *Roadway Express,* 481 U.S. 252, 264 (1987). In that decision, the Court upheld the facial constitutionality of the analogous provisions providing for preliminary reinstatement under the Surface Transportation Assistance Act (STAA), 49 U.S.C. 31105, and the procedures adopted by OSHA to protect the respondent's rights under the Due Process Clause of the Fifth Amendment, but ruled that the record failed to show that OSHA investigators had informed the respondent of the substance of the evidence to support reinstatement of the discharged employee. In so finding, the Court noted that, although a formal hearing was not required before OSHA ordered preliminary reinstatement, ''minimum due process for the employer in this context requires notice of the employee's allegations, notice of the substance of the relevant supporting evidence, an opportunity to submit a written response, and an opportunity to meet with the investigator and present statements from rebuttal witnesses.'' *Roadway Express,* 481 U.S. at 264; *see Bechtel* v. *Competitive Techs, Inc.,* 448 F.3d 469, 480–81 (Leval, J. concurring in the judgment) (finding OSHA's preliminary reinstatement order under SOX unenforceable because the information provided to the respondent did not meet the requirements of *Roadway Express*). Thus, OSHA declines to remove the language providing the respondent notice and opportunity to respond under § 1983.104(f).

Nonetheless, while recognizing that the purpose of § 1983.104(f) is to ensure that the respondent's Due Process rights have been met prior to OSHA ordering preliminary reinstatement, OSHA appreciates that complainants wish to stay informed regarding their case and may continue to have valuable input, even at this late stage in the investigation. Thus, under these rules, OSHA will provide complainants with a copy of the materials sent to the respondent under § 1983.104(f).

In addition to the revisions noted above, minor changes were made as needed in this section to clarify the provision without changing its meaning.

Section 1983.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement, affirmative action to abate the violation, back pay with interest, and compensatory damages. To reflect the agency's current practice, wherein a preliminary order that includes compensation will include, where appropriate, back pay and interest, the phrase ''and interest'' was added to this section.

In ordering interest on back pay under CPSIA, the Secretary has determined that interest due will be computed by compounding daily the Internal Revenue Service interest rate for the underpayment of taxes, which under 26 U.S.C. 6621, is generally the Federal short-term rate plus three percentage points. The Secretary believes that daily compounding of interest achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and recently was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board. *See Jackson Hosp. Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (NLRB Oct. 22, 2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right to request an award of attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to his termination, but not actually return to work. Such ''economic reinstatement'' is akin to an order for front pay and frequently is employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977, which protects miners from retaliation. 30 U.S.C. 815(c); *See, e.g., Sec'y of Labor ex rel of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (FMSHRC June 26, 2001). Front pay has been recognized as a possible remedy in cases

under the whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *See, e.g., Moder* v. *Vill. of Jackson,* ARB Nos. 01–095, 02–039, 2003 WL 21499864, at *10 (ARB June 30, 2003) (under environmental whistleblower statutes, ''front pay may be an appropriate substitute when the parties prove the impossibility of a productive and amicable working relationship, or the company no longer has a position for which the complainant is qualified.''); *Hobby* v. *Georgia Power Co.,* ARB No. 98–166, ALJ No. 1990–ERA–30 (ARB Feb. 9, 2001), *aff'd sub nom. Hobby* v. *U.S. Dep't of Labor,* No. 01–10916 (11th Cir. Sept. 30, 2002) (unpublished) (noting circumstances where front pay may be available in lieu of reinstatement but ordering reinstatement); *Doyle* v. *Hydro Nuclear Servs.,* ARB Nos. 99–041, 99–042, 00–012, 1996 WL 518592, at *6 (ARB Sept. 6, 1996) (under ERA, front pay appropriate where employer had eliminated the employee's position); *Michaud* v. *BSP Transport, Inc.,* ARB Nos. 97–113, 1997 WL 626849, at *4 (ARB Oct. 9, 1997) (under STAA, front pay appropriate where employee was unable to work due to major depression resulting from the retaliation); *Brown* v. *Lockheed Martin Corp.,* ALJ No. 2008–SOX–49, 2010 WL 2054426, at *55–56 (ALJ Jan. 15, 2010) (noting that while reinstatement is the ''presumptive remedy'' under Sarbanes-Oxley, front pay may be awarded as a substitute when reinstatement is inappropriate). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of CPSIA. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. Neither an employer nor an employee has a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication. No comments were received on this section. In addition to the revisions noted above, which clarify the provision of interest on back pay awards, minor changes were made as needed to clarify the provision without changing its meaning.

Subpart B—Litigation

Section 1983.106 Objections to the Findings and the Preliminary Order and Requests for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

The timely filing of objections stays all provisions of the preliminary order, except for the portion requiring reinstatement. A respondent may file a motion to stay OSHA's preliminary order of reinstatement with the Office of Administrative Law Judges. However, such a motion will be granted only based on exceptional circumstances. Language was added to paragraph (b) of this section to make this point clear. The Secretary believes that a stay of the Assistant Secretary's preliminary order of reinstatement under CPSIA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay. If no timely objection to OSHA's findings and/or preliminary order is filed, then OSHA's findings and/or preliminary order become the final decision of the Secretary not subject to judicial review.

No comments were received on this section. The term ''electronic communication transmittal'' was substituted for ''email communication'' and other minor changes were made as needed to clarify the provision without changing its meaning.

Section 1983.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 subpart A. It specifically provides for hearings to be consolidated where both the complainant and respondent object to the findings and/or order of the Assistant Secretary. This section further provides that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record.

In a revision from the interim final rule, paragraph (b) now notes the broad authority of ALJs to limit discovery in order to expedite the hearing. This change was made for consistency with OSHA's rules under other whistleblower statutes, which similarly note that the ALJ has broad authority to limit discovery. *See, e.g.,* 29 CFR 1979.107 (regulations under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)); 29 CFR 1980.107 (SOX). As with other whistleblower statutes administered by OSHA, CPSIA dictates that hearings ''shall be conducted expeditiously'' and allows complainants to seek de novo review of the complaint in federal court if the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination. *See* 15 U.S.C. 2087(b)(2) and (4). The ALJ's broad discretion to limit discovery, for example by limiting the number of interrogatories, requests for production of documents, or depositions allowed, furthers Congress' intent to provide for expeditious hearings under CPSIA.

Finally, this section has been revised to add paragraph (d), which specifies that the formal rules of evidence will not apply to proceedings before an ALJ under § 1983.107, but rules or principles designed to assure the production of the most probative evidence will be applied. The Department has taken the same approach under the other whistleblower statutes administered by OSHA. *See, e.g.,* 29 CFR 1979.107 (AIR21); 29 CFR 1980.107 (SOX). This approach is also consistent with the Administrative Procedure Act, which provides: ''Any oral or documentary

evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence * * *'' 5 U.S.C. 556(d); *see also Fed. Trade Comm'n* v. *Cement Inst.,* 333 U.S. 683, 805–06 (1948) (administrative agencies not restricted by rigid rules of evidence). The Department believes that it is inappropriate to apply the rules of evidence at 29 CFR part 18 subpart B because whistleblowers often appear pro se and may be disadvantaged by strict adherence to formal rules of evidence. Furthermore, hearsay evidence is often appropriate in whistleblower cases, as there often are no relevant documents or witnesses other than hearsay to prove discriminatory intent. ALJs have the responsibility to determine the appropriate weight to be given such evidence. For these reasons, the interests of determining all of the relevant facts are best served by not requiring strict evidentiary rules. No comments were received on this section, but, as explained above, this section was revised to specify that the formal rules of evidence will not apply to proceedings before an ALJ under this section.

Section 1983.108 Role of Federal Agencies

The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings under CPSIA. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Consumer Product Safety Commission, if interested in a proceeding, also may participate as amicus curiae at any time in the proceedings. No comments were received on this section; however, it has been revised to specify that documents need not be sent to the Assistant Secretary or the Department of Labor's Associate Solicitor for Fair Labor Standards unless the Assistant Secretary requests that documents be sent, the Assistant Secretary is participating in the proceeding, or service on the Assistant Secretary is otherwise required by these rules. Other minor changes were made as needed to clarify the provision without changing its meaning.

Section 1983.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under CPSIA. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to § 1983.104 is not subject to review. Thus, paragraph (c) of § 1983.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under CPSIA and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. A full discussion of the burdens of proof used by the Department of Labor to resolve whistleblower cases under this part is described above in the discussion of § 1983.104. Paragraph (d) notes the remedies that the ALJ may order under CPSIA and, as discussed under § 1983.105 above, provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621, and will be compounded daily. Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB.

No comments were received on this section. However, minor modifications were made to the description of the remedies available under CPSIA in this paragraph to more closely match the language regarding remedies in the statute and the description of the remedies in § 1983.105(a)(1). The statement that the decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review was deleted from § 1983.110(a) and moved to paragraph (e) of this section. Additionally, OSHA has revised the period for filing a timely petition for review with the ARB to 14 days rather than 10 business days. With this change, the final rule expresses the time for a petition for review in a way that is consistent with the other deadlines for filings before the ALJs and the ARB in the rule, which are also expressed in days rather than business days. This change also makes the final rule congruent with the 2009 amendments to Rule 6(a) of the Federal Rules of Civil Procedure and Rule 26(a) of the Federal Rules of Appellate Procedure, which govern computation of time before those tribunals and express filing deadlines as days rather than business days. Accordingly, the ALJ's order will become the final order of the Secretary 14 days after the date of the decision, rather than after 10 business days, unless a timely petition for review is filed. As a practical matter, this revision does not substantively alter the window of time for filing a petition for review before the ALJ's order becomes final.

Section 1983.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered

by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard. In order to be consistent with the practices and procedures followed in OSHA's other whistleblower programs, and to provide further clarification of the regulatory text, OSHA has modified the language of 1983.110(c), to clarify when the ALJ proceedings conclude and when the final decision of the ARB will be issued.

This section also provides that, based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under CPSIA, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under CPSIA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay.

If the ARB concludes that the respondent has violated the law, it will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621, and will be compounded daily. If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

With regard to section 1983.110(a), NWC urged deletion of the provision in the interim final rule that ''[a]ny exception not specifically urged will ordinarily be deemed waived by the parties.'' NWC commented that parties should be allowed to add additional grounds for review in subsequent briefs and that allowing parties to do so would further the goal of deciding cases on the merits. OSHA's inclusion of this provision is not intended to limit the circumstances in which parties can add additional grounds for review as a case progresses before the ARB; rather, the rules include this provision to put the public on notice of the possible consequences of failing to specify the basis of an appeal to the ARB. OSHA recognizes that while the ARB has held in some instances that an exception not specifically urged may be deemed waived, the ARB also has found that the rules provide for exceptions to this general rule. *See, e.g., Furland* v. *American Airlines, Inc.,* ARB Nos. 09–102, 10–130, 2011 WL 3413364, at *7, n.5 (ARB July 27, 2011), *petition for review filed,* (11th Cir. Oct. 3, 2011) (No. 11–14419–C) (where complainant consistently made an argument throughout the administrative proceedings the argument was not waived simply because it appeared in complainant's reply brief to the ARB rather than in the petition for review); *Avlon* v. *American Express Co.,* ARB No. 09–089, 2011 WL 4915756, at *4, *5 n.1 (ARB Sept. 14, 2011) (consideration of an argument not specifically raised in complainant's petition for review is within the authority of the ARB, and parallel provisions in the SOX whistleblower regulations do not mandate the ARB limit its review to ALJ conclusions assigned as error in the petition for review). However, recognizing that the interim final rule may have suggested too stringent a standard, OSHA has replaced the phrase ''ordinarily will'' with ''may.''

NWC also suggested that the review period be extended from 10 business days to 30 days to make this section parallel to the provision in § 1983.105(c), which allows for 30 days within which to file an objection. OSHA declines to extend the review period to 30 days because the shorter review period is consistent with the practices and procedures followed in OSHA's other whistleblower programs. Furthermore, parties may file a motion for extension of time to appeal an ALJ's decision, and the ARB has discretion to grant such extensions. However, as explained above, OSHA has revised the period to petition for review of an ALJ decision to 14 days rather than 10 business days. As a practical matter, this revision does not substantively alter the window of time for filing a petition for review before the ALJ's order becomes final.

Similarly, section 1983.110(c), which provides that the ARB will issue a final decision within 120 days of the conclusion of the ALJ hearing, was similarly revised to state that the conclusion of the ALJ hearing will be deemed to be 14 days after the date of the decision of the ALJ, rather than after 10 business days, unless a motion for reconsideration has been filed with the ALJ in the interim. Like the revision to section 1983.110(a), this revision does not substantively alter the length of time before the ALJ hearing will be deemed to have been concluded.

In addition to the changes noted above, OSHA has revised this section slightly to clarify that interest on back pay awards will be compounded daily and to make several minor changes to clarify the provision and more closely mirror the language used in the statute.

Subpart C—Miscellaneous Provisions

Section 1983.111 Withdrawal of Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It also provides for approval of settlements at the investigative and adjudicative stages of the case. No comments were received on this section.

The final rule adopts a revision to § 1983.111(a) that permits complainants to withdraw their complaints orally. In such circumstances, OSHA will, in writing, confirm a complainant's desire to withdraw. This revision will reduce burdens on complainants who no longer want to pursue their claims. Other minor changes were made as needed to clarify the provision without changing its meaning.

Section 1983.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ALJ or the ARB to submit the record of proceedings to the appropriate court pursuant to the rules of such court. No comments were received on this section.

Section 1983.113 Judicial Enforcement

This section describes the Secretary's authority under CPSIA to obtain judicial enforcement of orders and the terms of settlement agreements. CPSIA expressly authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary under 15 U.S.C. 2087(b)(6). ''Whenever

any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.'' Specifically, reinstatement orders issued at the close of OSHA's investigation under 15 U.S.C. 2087(b)(2)(A) are immediately enforceable in district court pursuant to 15 U.S.C. 2087(b)(6) and (7). Section 2087(b)(3)(B)(ii) provides that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position. Section 2087(b)(2)(A) instructs the Secretary to accompany any reasonable cause finding that a violation occurred with a preliminary order containing the relief prescribed by subsection (b)(3)(B), which includes reinstatement where appropriate, and provides that any preliminary order of reinstatement shall not be stayed upon the filing of objections. *See* 15 U.S.C. 2087(b)(2)(A) (''The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.''). Thus, under the statute, enforceable orders include preliminary orders that contain the relief of reinstatement prescribed by subsection (b)(3)(B). This statutory interpretation is consistent with the Secretary's interpretation of similar language in AIR21 and SOX. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); *Solis* v. *Tenn. Commerce Bancorp, Inc.,* 713 F. Supp. 2d 701 (M.D. Tenn. 2010); *But see Bechtel,* 448 F.3d 469; *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (*decision vacated, appeal dismissed,* No. 06–2295 (4th Cir. Feb. 20, 2008)). CPSIA also permits the person on whose behalf the order was issued to obtain judicial enforcement of the order. *See* 15 U.S.C. 2087(b)(7). No comments were received on this section. The final rule simplifies language in the first sentence and adds a sentence noting that, in accordance with the statute, 15 U.S.C. 2087(b)(6), the Secretary may file civil actions seeking enforcement of orders in the United States District Court for the District of Columbia as well as in the district court for the district in which the violation occurred.

Section 1983.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth provisions that allow a complainant to bring an original de novo action in district court under certain circumstances. OSHA has revised paragraph (a) of this section to more clearly explain the circumstances in which the complainant may file a complaint in district court and to incorporate the statutory provision allowing a jury trial at the request of either party in a district court action under CPSIA.

Under CPSIA, a complainant may bring an original de novo action in district court alleging the same allegations contained in the complaint filed with OSHA, if there has been no final decision of the Secretary within 210 days of the filing of the complaint, or within 90 days after receiving a written determination. ''Written determination'' refers to the Assistant Secretary's written findings under § 1983.105(a). *See* 15 U.S.C. 2087(b)(4). The Secretary's final decision is generally the decision of the ARB issued under § 1983.110. In other words, a complainant may file an action for de novo review in the appropriate district court in either of the following two circumstances: (1) A complainant may file a de novo action in district court within 90 days of receiving the Assistant Secretary's written findings issued under § 1983.105(a), or (2) a complainant may file a de novo action in district court if more than 210 days have passed since the filing of the complaint and the Secretary has not issued a final decision. The plain language of 15 U.S.C. 2087(b)(4), by distinguishing between actions that can be brought if the Secretary has not issued a ''final decision'' within 210 days and actions that can be brought within 90 days after a ''written determination,'' supports allowing de novo actions in district court under either of the circumstances described above.

However, it is the Secretary's position that complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint or within 90 days of the complainant's receipt of the Assistant Secretary's written findings. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals. *See* 15 U.S.C. 2087(b)(5)(B) (providing that an order with respect to which review could have been obtained in [the court of appeals] shall not be subject to judicial review in any criminal or other civil proceeding).

Under CPSIA, the Assistant Secretary's written findings become the final decision of the Secretary, not subject to judicial review, if no objection is filed within 30 days. 15 U.S.C. 2087(b)(2). Thus, a complainant may need to file timely objections to the Assistant Secretary's findings in order to preserve the right to file an action in district court.

In paragraph (b) of this section, OSHA eliminated the requirement in the interim final rule that complainants provide the agency 15 days advance notice before filing a de novo complaint in district court. Instead, this section now provides that within seven days after filing a complaint in district court, a complainant must provide a file-stamped copy of the complaint to the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the district court complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, Occupational Safety and Health Administration, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. This provision is necessary to notify the agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed.

This change responds to NWC's comment that the 15-day advance notice requirement for filing in suit in district court should be eliminated because it inhibits complainants' access to federal courts. OSHA believes that a provision for notifying the agency of the district court complaint is necessary to avoid unnecessary expenditure of agency resources once a complainant has decided to remove the complaint to federal district court. OSHA believes that the revised provision adequately balances the complainant's interest in ready access to federal court and the agency's interest in receiving prompt notice that the complainant no longer wishes to continue with the administrative proceeding.

Section 1983.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of CPSIA requires. No comments were received on this section and no changes have been made to it.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, § 1983.103) which was previously reviewed and approved for use by the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). The assigned OMB control number is 1218–0236.

V. Administrative Procedure Act

This is a rule of agency procedure and practice within the meaning of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for these regulations, which provide procedures for the handling of retaliation complaints. The Assistant Secretary, however, sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d), that a rule be effective 30 days after publication in the **Federal Register**, is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, as reaffirmed by Executive Order 13563, because it is not likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (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 the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Because this rulemaking is procedural in nature it is not expected to have a significant economic impact; therefore no statement is required under Section 202 of the Unfunded Mandates Reform Act of 1995. Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)), and does not require congressional review. Finally, this rule does not have ''federalism implications.'' The rule does 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'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of CPSIA. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

VIII. List of Subjects in 29 CFR Part 1983

Administrative practice and procedure, Employment, Consumer protection, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Authority and Signature

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble, 29 CFR part 1983 is revised to read as follows:

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.
1983.100 Purpose and scope.
1983.101 Definitions.
1983.102 Obligations and prohibited acts.
1983.103 Filing of retaliation complaint.
1983.104 Investigation.
1983.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

1983.106 Objections to the findings and the preliminary order and requests for a hearing.
1983.107 Hearings.
1983.108 Role of Federal agencies.
1983.109 Decision and orders of the administrative law judge.
1983.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1983.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.
1983.112 Judicial review.
1983.113 Judicial enforcement.
1983.114 District court jurisdiction of retaliation complaints.
1983.115 Special circumstances; waiver of rules.

Authority: 15 U.S.C. 2087; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1983.100 Purpose and scope.

(a) This part implements procedures of the employee protection provisions of the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2087. CPSIA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to consumer product safety.

(b) This part establishes procedures under CPSIA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those codified at 29 CFR part 18, set

forth the procedures under CPSIA for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements.

§ 1983.101 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under CPSIA.

(b) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(c) *Commission* means the Consumer Product Safety Commission.

(d) *Complainant* means the employee who filed a CPSIA complaint or on whose behalf a complaint was filed.

(e)(1) *Consumer product* means any article, or component part thereof, produced or distributed:

(i) For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; or

(ii) For the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

(iii) The term ''consumer product'' includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site, but does not include such a device that is permanently fixed to a site.

(2) The term *consumer product* does not include:

(i) Any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer;

(ii) Tobacco and tobacco products;

(iii) Motor vehicles or motor vehicle equipment (as defined by 49 U.S.C. 30102(a)(6) and (7));

(iv) Pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*));

(v) Any article or any component of any such article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by 26 U.S.C. 4181;

(vi) Aircraft, aircraft engines, propellers, or appliances (as defined in 49 U.S.C. 40102(a));

(vii) Boats which could be subjected to safety regulation under 46 U.S.C. chapter 43; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in 46 U.S.C. 2101(1)), to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this definitional section;

(viii) Drugs, devices, or cosmetics (as such terms are defined in 21 U.S.C. 321(g), (h), and (i)); or

(ix) Food (the term ''food'' means all ''food,'' as defined in 21 U.S.C. 321(f), including poultry and poultry products (as defined in 21 U.S.C. 453(e) and (f)), meat, meat food products (as defined in 21 U.S.C. 601(j)), and eggs and egg products (as defined in 21 U.S.C. 1033)).

(f) *CPSIA* means Section 219 of the Consumer Product Safety Improvement Act of 2008, Public Law 110–314, 122 Stat. 3016 (Aug. 14, 2008) (codified at 15 U.S.C. 2087).

(g) *Distributor* means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(h) *Employee* means an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by a manufacturer, private labeler, distributor, or retailer.

(i) *Manufacturer* means any person who manufactures or imports a consumer product. A product is manufactured if it is manufactured, produced, or assembled.

(j) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(k) *Private labeler* means an owner of a brand or trademark on the label of a consumer product which bears a private label. A consumer product bears a private label if:

(1) The product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product,

(2) The person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

(l) *Retailer* means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(m) *Respondent* means the employer named in the complaint who is alleged to have violated CPSIA.

(n) *Secretary* means the Secretary of Labor or person to whom authority under CPSIA has been delegated.

(o) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1983.102 Obligations and prohibited acts.

(a) No manufacturer, private labeler, distributor, or retailer may discharge or otherwise retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee), engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) An employee is protected against retaliation (as described in paragraph (a) of this section) by a manufacturer, private labeler, distributor, or retailer because the employee (or any person acting pursuant to a request of the employee):

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of the Consumer Product Safety Act, as amended by CPSIA, or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) Testified or is about to testify in a proceeding concerning such violation;

(3) Assisted or participated or is about to assist or participate in such a proceeding; or

(4) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of the Consumer Product Safety Act, as amended by CPSIA, or any other Act enforced by the

Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(c) This part shall have no application with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under the Consumer Product Safety Act, as amended by CPSIA, or any other law enforced by the Commission.

§ 1983.103 Filing of retaliation complaint.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by a manufacturer, private labeler, distributor, or retailer in violation of CPSIA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of CPSIA occurs, any employee who believes that he or she has been retaliated against in violation of CPSIA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

§ 1983.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The Assistant Secretary will also notify the respondent of its rights under paragraphs (b) and (f) of this section and § 1983.110(e). The Assistant Secretary will provide an unredacted copy of these same materials to the complainant (or the complainant's legal counsel if complainant is represented by counsel), and to the Consumer Product Safety Commission.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent and the complainant each may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent and the complainant each may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The agency will also provide the complainant with an opportunity to respond to such submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing that protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1983.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated CPSIA and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot

be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon thereafter as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1983.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of CPSIA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1983.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1983.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under CPSIA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1983.105. The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1983.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1983.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At

the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents must be sent to the Assistant Secretary and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of the Assistant Secretary, or where the Assistant Secretary is participating in the proceeding, or where service on the Assistant Secretary and the Associate Solicitor is otherwise required by these rules.

(b) The Consumer Product Safety Commission, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the Commission's discretion. At the request of the Commission, copies of all documents in a case must be sent to the Commission, whether or not it is participating in the proceeding.

§ 1983.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1983.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB), U.S. Department of Labor. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: affirmative action to abate the violation;

reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1983.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying the Assistant Secretary, orally or in writing, of his or her withdrawal. The Assistant Secretary then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. The Assistant Secretary will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1983.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates the Assistant Secretary's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1983.113.

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1983.109 and 1983.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1983.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under CPSIA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. The Secretary also may file a civil action seeking enforcement of the order in the United States district court for the District of Columbia. In civil actions under this section, the district court will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

(a) Reinstatement with the same seniority status that the employee would have had, but for the discharge or retaliation;

(b) The amount of back pay, with interest; and

(c) Compensation for any special damages sustained as a result of the discharge or retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

§ 1983.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1983.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(3) At the request of either party, the action shall be tried by the court with a jury.

(b) Within seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is

pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1983.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of CPSIA requires.

[FR Doc. 2012–16411 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0550]

Drawbridge Operation Regulation; Oakland Inner Harbor Tidal Canal, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Park Street Drawbridge across Oakland Inner Harbor Tidal Canal, mile 5.2, at Alameda, CA. The deviation is necessary to allow the County of Alameda Public Works Agency to perform necessary repairs on the drawbridge. This deviation allows single leaf operation of the double leaf bascule style drawbridge during the project.

DATES: This deviation is effective from 7 a.m., July 9, 2012 to 6 p.m. on July 18, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2012–0550 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0550 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 email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *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 County of Alameda Public Works Department has requested a temporary change to the operation of the Park Street Drawbridge, mile 5.2, over Oakland Inner Harbor Tidal Canal, at Alameda, CA. The drawbridge navigation span provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal; except that, from 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. However, the draw shall open during the closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given. Navigation on the waterway is commercial and recreational.

The Alameda (south) side of the bridge leaf of the double bascule drawspan may be secured in the closed-to-navigation position from 7 a.m., July 9, 2012 to 6 p.m. on July 18, 2012, to allow the County of Alameda Public Works Agency to perform necessary repairs on the bridge. The opposite leaf will continue to operate normally, providing unlimited vertical clearance and 120 feet horizontal clearance between leafs. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary deviation were raised.

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: June 27, 2012.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2012–16779 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0526]

RIN 1625–AA00

Safety Zone; Fireworks Display in Captain of the Port, Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Shilshole Bay for a fireworks display. The safety zone is necessary to help ensure the safety of the maritime public during the display and will do so by prohibiting all persons and vessels from entering the safety zone unless authorized by the Captain of the Port or his Designated Representative.

DATES: This rule is effective from August 2, 2012, until August 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0526. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email ENS Nathaniel P. Clinger, Coast Guard Sector Puget Sound, Waterways Management Division; telephone 206–217–6045, email *SectorPugetSoundWWM@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 to do so would be impracticable, since the event would be over before notice could be given and comments taken, and it is immediately necessary to protect the event's spectators from the hazards associated with fireworks displays.

B. Basis and Purpose

(a) The authority for this action can be found in 33 CFR 1.05–1(f).

(b) Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event.

(c) The establishment of a safety zone around displays helps to ensure the safety of the maritime public by prohibiting all persons and vessels from coming too close to the fireworks display and the associated hazards.

C. Discussion of the Final Rule

This rule establishes a safety zone for the following fireworks display: Comcast Cablepalooza on August 2, 2012 in Shilshole Bay near Puget Sound, WA. All persons and vessels will be prohibited from entering the safety zone during the date and time it is effective unless authorized by the Captain of the Port or his Designated Representative.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action because it creates a safety zone that is minimal in size and short in duration, and maritime traffic will be able to transit around the zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 through the established safety zone during the time of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zone is minimal in size and short in duration, maritime traffic will be able to transit around it and may be permitted to transit it with permission from the Captain of the Port or his Designated Representative.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–223 to read as follows:

§ 165.T13–223 Safety Zone; Fireworks Display in Captain of the Port, Puget Sound Zone

(a) *Location.* The following area is designated as a safety zone: All waters of Shilshole Bay encompassed within a 100 yard radius around position 47°40.465′ N, 122°24.573′ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his Designated Representative. Designated Representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be enforced from 5 p.m. on August 2, 2012 until 1 a.m. on August 3, 2012.

Dated: June 26, 2012.

S.J. Ferguson,

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

[FR Doc. 2012–16777 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0570]

RIN 1625–AA00

Safety Zone; GR Symphony Fireworks Display, Kalamazoo Lake, Saugatuck, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Kalamazoo Lake in Saugatuck Michigan. This safety zone is intended to restrict vessels from a portion of Kalamazoo Lake during the GR Symphony Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 8:45 p.m. until 11 p.m. on July 17, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0570]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, 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 temporary rule, call or email CWO Jon Grob, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, email *Jon.K.Grob@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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.** For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 8:45 p.m. and 11 p.m. on July 17, 2012, a fireworks display will be held on Kalamazoo Lake in Saugatuck, MI. The Captain of the Port, Sector Lake Michigan has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the GR Symphony Fireworks. This zone will be effective and enforced from 8:45 p.m. until 11 p.m. on July 17, 2012. This zone will encompass all waters of Kalamazoo Lake, Saugatuck, MI within a 700 foot radius of position 42°38′39.54″ N and 86°12′17″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 intending to transit or anchor in a portion of Kalamazoo Lake, Saugatuck, MI on the evening of July 17, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only a short period of time in the evening. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue a local Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0570 to read as follows:

§ 165.T09–0570 Safety Zone; GR Symphony Fireworks Display, Kalamazoo Lake, Saugatuck, MI.

(a) *Location.* The safety zone will encompass all waters of Kalamazoo Lake, Saugatuck, Michigan within a 700 foot radius of position 42°38′54″ N and 86°12′17″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 17, 2012 from 8:45 p.m. until 11 p.m.

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: June 27, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–16778 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0577]

RIN 1625–AA00

Safety Zone; Major Motion Picture Filming, Atlantic Intracoastal Waterway; Southport, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Atlantic Intracoastal Waterway near Southport, North Carolina. The safety zone is intended to restrict vessels from a portion of the Atlantic Intracoastal Waterway due to the filming of a movie involving explosions and other dangerous stunts on water. The temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the stunts that will be performed on the river during the filming of this motion picture.

DATES: This rule is effective from July 25, 2012, until August 3, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0577]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 the final details for this event was not provided to the Coast Guard until June 10, 2012. As such, it is impracticable to provide a full comment period due to lack of time. In addition, given the high risks of injury and damage that will be created during the filming of the movie, a delay in enacting this safety zone would be contrary to public interest.

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**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The temporary safety zone is necessary to protect vessels from the hazards associated with the stunts that will be performed during the filming of a major motion picture. The filming will involve explosions and highly choreographed stunts. The Captain of the Port, Sector North Carolina, has determined that the stunts associated with the filming of this motion picture do pose significant risks to public safety and property and that a safety zone is necessary.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Atlantic Intracoastal Waterway at Southport, NC. This safety zone will be enforced between 8 p.m. and 6 a.m. from July 25, 2012 until July 27, 2012 and again from 8 p.m. to 6 a.m. on August 1, 2012 until August 3, 2012 and encompasses all navigable waters within a 300 yard radius from latitude 33°54.9′ North, longitude 078°01.44′ West. [DATUM: NAD 83]

While the enforcement periods are scheduled for approximately 10 hour blocks, filming and execution of the stunts will not take place continuously during those periods. There will be periods of set up, break down, preparation, et cetera. It is anticipated that actual filming will take place in 20 minute increments throughout the enforcement periods and that, in some cases; the filming may end prior to the 6 a.m. enforcement deadlines. All persons and vessels shall comply with the instructions of the Captain of the Port, Sector North Carolina, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina, or his or her on-scene representative. The Captain of the Port, Sector North Carolina, or his or her on-scene representative may be contacted via VHF–FM channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the area, the effect of the rule will not be significant since this rule will only be enforced while unsafe conditions exist. The Coast Guard also expects that traffic will generally be very low based on the time of night that this closure will occur.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Atlantic Intracoastal Waterway from 8 p.m. to 6 a.m. from July 25, 2012 to July 27, 2012 and from 8 p.m. to 6 a.m. from August 1, 2012 to August 3, 2012.

The safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Traffic will only be prohibited from passing through the zone when actual filming is being conducted. Traffic will only be stopped for a short duration not to exceed twenty minutes during any one closure. In the event that the safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector North Carolina, or his or her on-scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Marines that the regulation is in effect.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0577 to read as follows:

§ 165.T05–0577 Safety zone; major motion picture filming, Atlantic Intracoastal Waterway, Southport, NC.

(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 safety zone will encompass all waters on the Atlantic Intracoastal Waterway with a 300 yards radius of latitude 33°54.9′ North, longitude 078°01.44′ West. All geographic coordinates are North American Datum 1983 (NAD 83).

(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 (910) 343–3882 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 8 p.m. to 6 a.m. from July 25, 2012 until July 27, 2012 and from 8 p.m. to 6 a.m. from August 1, 2012 until August 3, 2012 unless cancelled earlier by the Captain of the Port.

Dated: June 25, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–16780 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0600]

RIN 1625–AA00

Safety Zone; Detroit Symphony Orchestra at Ford House Fireworks, Lake St. Clair, Grosse Pointe Shores, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on

Lake St. Clair, Grosse Pointe Shores, MI. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective from 10:15 p.m. on July 13 until 10:30 p.m. on July 14, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0600]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, 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 temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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.** For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 10:15 p.m. and 10:30 p.m. on July 13 and 14, 2012, a fireworks display will be held on Lake St. Clair near Grosse Pointe Shores, MI. The Captain of the Port Detroit has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Detroit has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Detroit Symphony Orchestra at the Ford House Fireworks. This zone will be effective and enforced from 10:15 p.m. until 10:30 p.m. on July 13 and 14, 2012. This zone will encompass all waters of Lake St. Clair, Grosse Pointe Shores, MI within a 600 foot radius of position 42° 27′15″ N, 082° 51′56″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 intending to transit or anchor in a portion of Lake St. Clair on the evening of July 13 and 14, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only fifteen minutes late in the evening. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0600 to read as follows:

§ 165.T09–0600 Safety Zone; Detroit Symphony Orchestra at Ford House Fireworks, Lake St. Clair, Grosse Pointe Shores, MI

(a) Location. The safety zone will encompass all waters of Lake St. Clair, Grosse Pointe Shores, MI within a 600 foot radius of position 42°27′15″ N and 082°51′56″ W (NAD 83).

(b) Enforcement Period. This regulation will be enforced on July 13 and 14, 2012 from 10:15 p.m. until 10:30 p.m.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain

permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: June 25, 2012.

J.E. Ogden,

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

[FR Doc. 2012–16789 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2011–1000]

RIN 1625–AA00

Swim Events in the Captain of the Port New York Zone; Hudson River, East River, Upper New York Bay, Lower New York Bay; New York, NY

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing seven temporary safety zones for swim events within the Captain of the Port (COTP) New York Zone. These zones will be established on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. These temporary safety zones are necessary to protect the maritime public and event participants from the hazards associated with these events. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP New York or the designated representative.

DATES: This rule is effective in the **Federal Register** from August 9, 2012 through September 16, 2012. This rule will be effective with actual notice for enforcement purposes from June 16, 2012, through August 9, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2011–1000]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Kimberly Farnsworth, Coast Guard; telephone (718) 354–4163, email *Kimberly.A.Farnsworth@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

On April 16, 2012, we published a notice of proposed rulemaking (NPRM) entitled Swim Events in the Captain of the Port New York Zone in the Federal Register (77 FR 22525). We received no comments on the proposed rule. No public meeting was requested and none was held.

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 NYC Triathlon Swim Clinic and the Iron Man Open Water Swim Clinics are scheduled to occur on June 16 and June 30, 2012, respectively. These two events will occur before 30 days has elapsed after the publication of the rule. The event sponsors are unable and unwilling to postpone these events because the dates of these events were chosen based on optimal tide, current, and weather conditions needed to promote the safety of swim participants. In addition, any change to the dates of the events would cause economic hardship on the marine event sponsors and negatively impact other activities being held in conjunction with these events, such as potentially causing numerous event participant cancellations.

B. Basis and Purpose

The legal basis for the rule is 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; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Marine events are frequently held on the navigable waters within the COTP Sector New York Zone. The COTP has determined that swim events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes temporary safety zones for the duration of each event.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within the areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

C. Discussion of Comments, Changes and the Final Rule

No comments were received. The Coast Guard made the following changes to this final rule that were not published in the NPRM:

The swim events listed in TABLE 1 of 165.T01–1000 were modified to now include rain dates. Rain dates are now included for the following events: Iron Man Open Water Swim Clinics, Verrazano Bridge Swim, Rose Pitonof Swim, and Liberty to Freedom Swim. The sponsors advised that due to the limited reliability of weather forecast and predictions it was necessary to have rain dates in the event of unexpected adverse weather conditions.

In the NPRM, the Coast Guard proposed under Sec. 165.T01–1000(g) the following: ''For all swim events listed in TABLE 1 to § 165.T01–1000, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.'' The text in Sec. 165.T01–1000(g) now reads as follows: ''For all swim events listed in the TABLE to § 165.T01–1000, vessels not associated with the event that are permitted to enter the regulated areas in accordance with section (c), shall maintain a separation of at least 100 yards from the participants.'' We revised the text to help the public better understand our intentions and eliminate any confusion that the regulated areas listed in TABLE 1 of 165.T01–1000 are geographically fixed. The requirement for separation of at least 100 yards from each event participant is applicable to vessels that receive permission from the COTP to enter the regulated areas.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard's implementation of these temporary safety zones will be of short duration and designed to minimize the impact to vessel traffic on the navigable waters. These safety zones will only be enforced for a short duration. Furthermore, vessels may be authorized to transit the zones with permission of the COTP New York or designated representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. 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 and operators of vessels intending to transit, or anchor in the designated safety zones as listed in TABLE 1 of 165.T01–1000 during the enforcement period of each swim event.

These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zone areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the regulated areas as listed in TABLE 1 of 165.T01–1000. Notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of seven temporary safety

zones on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMMITED 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which authorizes the Coast Guard to define Safety Zone Regulations.

■ 2. Add § 165.T01–1000 to read as follows:

§ 165.T01–1000 Swim Events in the Captain of the Port New York Zone, Hudson River, East River, Upper New York Bay, Lower New York Bay, New York, NY.

(a) *Regulation.* The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swim events listed in the TABLE of 165.T01–1000. These regulations will be enforced for the duration of each swim event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners, and Broadcast Notice to Mariners. First Coast Guard District Local Notice to Mariners can be found at *http://www.navcen.uscg.gov/.*

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) New York Zone to act on his or her behalf.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter within, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) For all swim events listed in the TABLE to § 165.T01–1000, vessels not associated with the event that are permitted to enter the regulated areas in accordance with section (c), shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO § 165.T01–1000

1.0	Hudson River
1.1 Iron Man Open Water Swim Clinics	• Date: June 30 and July 14, 2012. • Rain Date: July 1 and July 15, 2012. • Enforcement Period: 8:00 a.m. to 10:30 a.m. • Location site: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°51′41″ N, 073°57′13″ W; thence to 40°51′41″ N, 074°56′12″ W; thence to 40°54′00″ N, 073°54′57″ W; thence to 40°54′00.0″ N, 073°56′06″ W; thence along the shoreline to the point of origin.
1.2 NYC Triathlon Swim Clinic	• Date: June 17, 2012. • Rain Date: June 16 or June 24, 2012. • Enforcement Period: 10:00 a.m. to 11:30 a.m. • Location: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°48′0.15″ N, 073°58′30.59″ W; thence to 40°48′19.17″ N, 073°59′9.76″ W; thence to 40°47′33.29″ N, 073°59′43.51″ W; thence to 40°47′12.76″ N, 073°59′3.87″ W thence along the shoreline to the point of origin.
2.0	Lower New York Bay
2.1 Verrazano Bridge Swim	• Date: July 21, 2012. • Rain Date: July 22, 2012. • Enforcement Period: 12:30 p.m. to 1:30 p.m.

TABLE 1 TO § 165.T01–1000—Continued

	• Location: All waters of the Lower New York Bay in the vicinity of the Verrazano Bridge, bound by the following points: 40°36′12.74″ N, 074°3′12.92″ W; thence to 40°35′59.20″ N, 074°3′8.72″ W; thence to 40°36′27.30″ N, 074°2′3.101″ W; thence to 40°36′32.91″ N, 074°2′9.30″ W; thence along the shoreline to the point of origin.
3.0	East River, Upper New York Bay, Lower New York Bay
3.1 Rose Pitonof Swim	• Date: August 18, 2012. • Rain Date: August 19, 2012. • Enforcement Period: 9:00 a.m. to 5:00 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°44′11.55″ N, 073°58′21.58″ W; thence to 40°44′19.63″ N, 073°57′45.25″ W; thence to 40°34′10.43″ N, 073°58′59.88″ W; thence to 40°32′16.62″ N, 074°2′34.30″ W; thence to 40°36′13.95″ N, 074°3′8.58″ W; thence to 40°38′38.81 N, 074°4′15.14″ W; thence back to the point of origin.
4.0	Upper New York Bay, Hudson River
4.1 Liberty to Freedom Swim	• Date: September 15, 2012. • Rain Date: September 16, 2012. • Enforcement Period: 3:00 p.m. to 5:00 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°41′24.15″ N, 074°2′33.47″ W; thence to 40°41′35.25″ N, 074°1′10.95″ W; thence to 40°42′48.91″ N, 074°1′3.44″ W; thence to 40°43′0.17″ N, 074°1′47.99″ W; thence to 40°41′27.55″ N, 074°2′49.72″ W; thence back to the point of origin.
5.0	Upper New York Bay, Hudson River
5.1 Brooklyn Bridge Swim	• Date: July 15, 2012. • Rain Date: NA. • Enforcement Period: 7:15 a.m. to 9:15 a.m. • Location: All waters of the East River, bound by the following points: 40°42′17.04″ N, 073°59′21.87″ W; thence to 40°42′12.03″ N, 073°59′46.17″ W; thence to 40°42′24.48″ N, 074°0′4.09″ W; thence to 40°42′34.19 N, 073°59′31.41″ W; thence back to point of origin.
6.0	Upper New York Bay, Lower New York Bay
6.1 Ederle Swim	• Date: August 18, 2012. • Rain Date: August 19, 2012. • Enforcement Period: 10:00 a.m. to 7:30 p.m. • Location: All waters of the Hudson River, Upper and Lower New York Bays, bound by the following points: 40°42′48.13″ N, 074°0′58.74″ W; thence to 40°42′3.20″ N, 073°59′54.84″ W; thence to 40°36′32.70″ N, 074°2′10.73″ W; thence to 40°28′4.43 N, 073°59′38.14″ W; thence to 40°28′41.58″ N, 074°0′55.27″ W; thence to 40°38′38.77″ N, 074°4′15.05″ W; thence to 40°43′0.31″ N, 074°1′48.11″ W thence back to point of origin.

Dated: June 12, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2012–16784 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2011–1126]

RIN 1625–AA87

Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is establishing security zones around designated participating vessels that are not protected by the Naval Vessel Protection Zone in Seattle's Seafair Fleet Week, while those vessels are in the Sector Puget Sound Captain of the Port (COTP) Zone. A designated participating vessel is a vessel that is named by the Coast Guard each year prior to the event in a **Federal Register** notice, as well as the Local Notice to Mariners. These security zones are necessary to help ensure the security of the vessels from sabotage or other subversive acts during Seattle's Seafair Fleet Week Parade of Ships and while moored in the Port of Seattle. The Coast Guard will ensure the security of these

vessels by prohibiting any person or vessel from entering or remaining in the security zones unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: This rule is effective on August 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2011–1126. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Anthony P. LaBoy, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206–217–6323, email *SectorPugetSoundWWM@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard published a NPRM, Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA, on February 6, 2012. The Coast Guard received 02 comments submitted via regulations.gov and received 01 request for public meeting. Previously, on July 11, 2011, the Coast Guard published a Temporary Final Rule (TFR), Security Zone; 2011 Seattle Seafair Fleet Week Moving Vessels, Puget Sound, Washington which established identical security zones. No comments were received regarding the implementation or enforcement of the temporary security zones established for the 2011 Seattle's Seafair Fleet Week.

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** because the 2012 Seafair Parade of Ships would be over by the time the 30 day period ended, and this security zone must be in place before the commencement of this event in order to ensure the security of the participating military vessels.

B. Basis and Purpose

Seattle's Seafair Fleet Week is an annual event which brings a variety of military vessels to Seattle. During the event, the visiting military vessels are at risk because of their military function, and because they will be transiting in the Parade of Ships in close proximity to spectators, highly populated areas, and other unscreened vessels. Thousands of visitors are given tours on board these vessels throughout the week while they are moored in downtown areas of Seattle. This increases the necessity to ensure the security of each vessel. This rule is necessary to ensure the security of visiting foreign and domestic military vessels not covered under the Naval Vessel Protection Zone (NVPZ). The size of these security zones is necessary to ensure the security of the visiting vessels and is intended to mirror the NVPZ as defined at 33 CFR 165.2015 and 33 CFR 165.2030. This is because it is important for the on-scene patrol to have a consistent zone size for all participating ships in order to maintain control and minimize confusion. The security zones will help prevent any acts which would harm the vessels and their crew and endanger vessels, property, and persons along the parade route.

C. Discussion of Comments, Changes and the Final Rule

The regulatory text of this final rule is the same as the proposed regulatory text contained in the Notice of Proposed Rulemaking. During the comment period, 2 comments were received. One comment stated that this rule would create a ''no protest'' zone during Seattle's Seafair Fleet Week. The Coast Guard finds this safety zone does not create a no-protest zone because those wishing to conduct first amendment activities may do so in the large area of water between the 100 yard safety zone extending from Pier 66 (as set out in 33 CFR 165.1330) and the inner 100 yards of this security zone. The Pier 66 security zone extends 100 yards from Pier 66 within a box encompassed by the points 47°36.719′ N, 122°21.099′ W; 47°36.682′ N, 122°21.149′ W; 47°36.514′ N, 122°20.865′ W; and 47°36.552′ N, 122°20.814′ W. The vessels transiting in the parade of ships, including those protected by the security zones, transit on a track line which is at least 400 yards away from Pier 66. For this security zone, which extends 500 yards around the named vessels, the COTP has granted general permission to enter the outer 400 yards. If a vessel protected by the security zone is transiting past Pier 66 at a distance of 400 yards from Pier 66, then the area between the inner 100 yards of the security zone and the west end of the 100 yard safety zone extending from Pier 66 is approximately 200 yards. Vessels may lawfully remain within these 200 yards without violating either the safety zone or security zone so long as they operate at the minimum speed required to remain on course. In this ample space, those conducting first amendment activities may be seen by transiting vessels and spectators on the piers. Additionally, there are other areas where persons and vessels may gather and transmit their message where they can be seen by the spectators. In the preamble of the final rule that established the safety zone in 33 CFR 165.1330 (76 FR 30014), the Coast Guard described these areas, which include the area north and south of Pier 66, and the area in front of the public Pier 63, where spectators also gather. The availability of these areas for first amendment activities is not affected by the security zone described in this final rule. It is noted that in 2011, identical security zones were created to those that are established by this final rule. In 2011, there were no infractions into the zones and no enforcement action taken.

One comment stated that this rule will create a 500 yard exclusionary zone which is more restrictive than a Naval Vessel Protection Zone (NVPZ). In the comment it was stated that ''the newly defined security zone mandates that vessel operator stay 500 yard from identified vessels and that operators must somehow gain permission to enter or remain within 500 yards.'' The security zones established by this rule prohibit any person or vessel from entering or remaining within 500 yards of each designated participating vessel during Seattle's Seafair Fleet Week while in the Sector Puget Sound COTP zone. However, the COTP has granted general permission for vessels to enter the outer 400 yards of the security zone, as long as those vessels within the outer 400 yards of the security zone operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. It is stated in this final rule that the COTP has granted permission to enter the outer 400 yards of the security zone while operating at the minimum speed necessary to maintain course. This sentence is the permission required to enter the outer 400 yards. No further request must be made to enter the outer

400 yards and transit at the minimum speed required to maintain course.

There was one request for public hearing submitted. The Coast Guard does not intend to hold a public hearing. Sufficient time was given to address concerns and for the public to submit comments during the Notice of Proposed Rulemaking's 90 day comment period. The Coast Guard will publish an annual notice in the **Federal Register** naming the designated participating vessels at least 03 days before that year's event and will also provide this information in the Local Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the security zones will be in place for a limited period of time and vessel traffic will be able to transit around the security zones. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound or a Designated Representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received zero comments from the Small Business Administration on this rule. 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 and operators of vessels intending to operate within the waters covered by the security zones for approximately 1 week each year when the zones for that year's Fleet Week are identified and subject to enforcement. The rule will not have a significant economic impact on a substantial number of small entities because the security zones will be in place for a limited period of time and maritime traffic will still be able to transit around the security zones. Maritime traffic may also request permission to transit though the zones from the COTP, Puget Sound or a Designated Representative.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of security zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701; 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 § 165.1333 to read as follows:

§ 165.1333 Security Zones, Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA.

(a) *Location.* The following areas are security zones: all navigable waters within 500 yards of each designated participating vessel while each such vessel is in the Sector Puget Sound Captain of the Port (COTP) zone, as defined in 33 CFR 3.65–10, during a time specified in paragraph (e) of this section. The Coast Guard will publish a notice in the **Federal Register** each year at least 03 days before the start of the Seattle Seafair Fleet Week to identify the designated participating vessels for that year. The Coast Guard will also provide this information in the Local Notice to Mariners.

(b) *Definitions.* For purposes of this section—

Designated participating vessel means a military vessel participating in the Seattle Seafair Fleet Week that has been designated by the Sector Puget Sound COTP in accordance with this section.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to implement or enforce this section.

Seattle Seafair Fleet Week means an annual event involving a parade of U.S. Navy, U.S. Coast Guard, and foreign military ships in Seattle's Elliott Bay waterfront and tours of those ships while docked at Port of Seattle facilities.

(c) *Regulations.* Under 33 CFR Part 165, Subpart D, no person or vessel may enter or remain in the security zones described in paragraph (a) of this section without the permission of the COTP or a designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones.

(d) *Authorization.* All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or a Designated Representative by contacting the on-scene Coast Guard patrol craft on VHF 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene Coast Guard patrol craft until they are outside of the security zones.

(e) *Annual enforcement period.* The security zones described in paragraph (a) of this section will be enforced during Seattle Seafair Fleet Week each year for a period of up to one week. The Seattle Seafair Fleet Week will occur sometime between July 25 and August 14. The annual **Federal Register** notice identifying the designated participating vessels will also identify the specific dates of the event for that year.

Dated: June 15, 2012.

S.J. Ferguson,

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

[FR Doc. 2012–16782 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO38

Dependency and Indemnity Compensation Payable to a Surviving Spouse With One or More Children Under Age 18

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulation regarding the additional statutory amount of Dependency and Indemnity Compensation (DIC) payable to a surviving spouse with one or more children below the age of 18. The Veterans' Compensation Cost-of-Living Adjustment Act of 2006 redesignated the statutory section cited in VA's governing regulation. This amendment is necessary to conform the regulation to the statutory provision.

DATES: *Effective Date:* This final rule is effective July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1311, Dependency and indemnity compensation [DIC] to a surviving spouse, by adding a subsection (e) which provides a $250 increase in the monthly rate of DIC to which a surviving spouse with one or more children below the age of 18 is entitled. Sec. 301, Public Law 108–454, 118 Stat. 3610. This statutory change was incorporated as 38 CFR 3.10(e)(4). *See* 71 FR 44915, Aug. 8, 2006.

However, because 38 U.S.C. 1311 already contained a subsection (e), Congress amended 38 U.S.C. 1311 by redesignating the new subsection (e) as subsection (f). *See* Sec. 4, Public Law 109–361, 120 Stat. 2063. To reflect this statutory technical amendment, VA is amending the first sentence of 38 CFR 3.10(e)(4) to change the citation from 38 U.S.C. 1311(e) to 38 U.S.C. 1311(f).

We are also removing the authority citation at the end of paragraph (e). This citation is unnecessary because the regulation text itself contains the correct statutory citation and the authority citation at the end of § 3.10 includes § 1311 in its entirety.

Administrative Procedures Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. The change made by this rule merely reflects a minor statutory technical amendment. Therefore, VA is issuing this rule as a final rule.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''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 affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (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 the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 3, 2012, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: July 5, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.10 [Amended]

■ 2. Amend § 3.10 by:

■ a. In paragraph (e)(4), removing ''38 U.S.C. 1311(e)'' and adding, in its place, ''38 U.S.C. 1311(f)''.

■ b. Removing the authority citation at the end of paragraph (e)(4).

[FR Doc. 2012–16810 Filed 7–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AO22

Dependency and Indemnity Compensation (DIC) Benefits for Survivors of Former Prisoners of War Rated Totally Disabled at Time of Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding benefits for survivors of former prisoners of war who were rated totally disabled at the time of death. This amendment is necessary to conform the regulation to the authorizing statutory provision. The effect of this amendment is to liberalize the eligibility criteria for dependency and indemnity compensation (DIC) based on the death of a former prisoner of war whose service-connected disabilities had been continuously rated totally disabling for at least 1 year when he or she died.

DATES: *Effective Date:* This final rule is effective July 10, 2012.

Applicability Date: This final rule applies to an application for dependency and indemnity compensation that:

- Is received by VA on or after October 1, 2011;
- Was received by VA before October 1, 2011, but had not been decided by a VA regional office as of that date;
- Is appealed to the Board of Veterans' Appeals (Board) on or after October 1, 2011;

• Was appealed to the Board before October 1, 2011, but had not been decided by the Board as of that date; or

• Is pending before VA on or after October 1, 2011, because the Court of Appeals for Veterans Claims vacated a Board decision on the application and remanded it for readjudication.

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: DIC is a monthly benefit generally payable to the surviving spouse or child of a veteran who died in line of duty during active service or as a result of a service-connected disability. Under 38 U.S.C. 1318, however, DIC is payable to the surviving spouses or children of certain other deceased veterans. Specifically, until recently section 1318(b)(3) authorized payment to those survivors of a former prisoner of war who died after September 30, 1999, while entitled to compensation for a service-connected disability continuously rated totally disabling for a period of not less than 1 year immediately preceding death.

Section 603(a) of the Veterans' Benefits Act of 2010, Public Law 111–275, 124 Stat. 2864, 2885, amended 38 U.S.C. 1318(b)(3) by removing the requirement that a former prisoner of war have died after September 30, 1999, for DIC to be payable under 38 U.S.C. 1318(b)(3). Accordingly, VA is removing the language ''who died after September 30, 1999'' from its implementing regulation.

In order to conform the adjudication regulation with the statutory provision, VA is amending 38 CFR 3.22(a)(2)(iii) by eliminating the language ''who died after September 30, 1999.'' The statutory amendment was effective October 1, 2011. Public Law 111–275, sec. 603(b), 124 Stat. at 2885.

Administrative Procedure Act

The Secretary of Veterans Affairs finds, in accordance with 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), that this final rule merely incorporates statutory provisions. Therefore, the procedures of the APA regarding notice of proposed rulemaking and opportunities for public participation are unnecessary. Further, pursuant to section 553(d)(1), as a substantive rule which merely relieves a restriction, this final rule is exempt from the APA's 30-day delayed effective date requirement.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''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 affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (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 the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal and policy implications of this rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866 because it is merely a restatement of the statute.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability; 64.110; Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 21, 2012, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: July 5, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.22 [Amended]

■ 2. Amend § 3.22, paragraph (a)(2)(iii) by removing ''who died after September 30, 1999''.

[FR Doc. 2012–16812 Filed 7–9–12; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

New Express Mail Price Category—Express Mail Padded Flat Rate Envelope

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to expand Express Mail® product options to include a new Padded Flat Rate Envelope.

DATES: *Effective date:* July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa Bobb-Semple (202) 268–3391 or Garry Rodriguez (202) 268–7281.

SUPPLEMENTARY INFORMATION: This final rule describes a new price category under Express Mail, Express Mail Padded Flat Rate Envelope, established by the Governors of the United States Postal Service®. The new price category is available under Docket Number CP2012–39 on the Postal Regulatory Commission's Web site at *http://www.prc.gov,* and is also located on the Postal Explorer® Web site at *http://pe.usps.com.*

The new Express Mail Padded Flat Rate Envelope measures 12.5 inches x 9.5 inches and is available to retail, commercial base, and commercial plus customers at the same price currently offered for the Flat Rate Envelope and Legal Flat Rate Envelope. In addition, all other standards that apply to Express Mail apply to the Express Mail Padded Flat Rate Envelope. The USPS®-produced Express Mail Padded Flat Rate Envelope is not available at retail Post Office™ locations but may be ordered online at *www.usps.com/shop.*

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail

* * * * *

110 Express Mail

113 Prices and Eligibility

1.0 Express Mail Prices and Fees

* * * * *

1.4 Flat Rate Packaging

* * * * *

1.4.2 Flat Rate Envelopes—Price Eligibility

[Revise the first sentence of 1.4.2 as follows:]

There are three types of USPS-produced Express Mail Flat Rate Envelopes: A regular-size envelope, a padded envelope, and a legal-size envelope.* * *

* * * * *

115 Mail Preparation

1.0 Express Mail Supplies

1.1 Packaging Provided by USPS

[Revise the text of 1.1 as follows:]

Express Mail packaging provided by the USPS must be used only for Express Mail. The USPS-produced Express Mail Padded Flat Rate Envelope and Legal Flat Rate Envelope are not available at retail Post Office locations but may be ordered online at *www.usps.com/shop.*

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–16488 Filed 7–9–12; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110707371–2136–02]

RIN 0648–XC098

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the 2012 Trimester 2 Directed Longfin Squid Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that 90 percent of the Trimester 2 longfin squid (longfin) quota is projected to be harvested by 0001 hours, July 10, 2012. Therefore, the directed longfin fishery in the Exclusive Economic Zone (EEZ) will be closed as of 0001 hours, July 10, 2012, and vessels issued a Federal permit are prohibited from possessing or landing more than 2,500 lb (1.13 mt) of longfin for the remainder of Trimester 2 (through August 31, 2012). The directed longfin fishery will re-open for Trimester 3 on September 1, 2012. This action is necessary to prevent the fishery from exceeding its Trimester 2 allocation of 12,490,290 lb (5,666 mt), and to allow for effective management of this stock.

DATES: Effective 0001 hours, July 10, 2012, through 2400 hours, August 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978–675–2179, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the longfin fisheries are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.22.

The longfin DAH for the 2012 fishing year (FY) is 22,220 mt, and is allocated into three trimesters: Trimester 1 (January 1–April 30) is allocated 43 percent of the quota (9,555 mt);

Trimester 2 (May 1–August 31) is allocated 17 percent of the quota (3,777 mt); and Trimester 3 (September 1–December 31) is allocated 40 percent of the quota (8,888 mt) (77 FR 16472, March 21, 2012).

Due to an underharvest of quota in Trimester 1, NMFS adjusted the Trimester 2 quota from the initial quota of 3,777 mt (8,326,860 lb) to a new quota of 5,666 mt (12,490,290 lb). Section 648.24 requires NMFS to close the directed longfin fishery in the EEZ when 90 percent of the Trimester 2 quota is projected to be harvested. NMFS is required to notify the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all longfin permit holders at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 90 percent of the Trimester 2 longfin quota for the 2012 fishing year will be harvested on July 10, 2012. Therefore, effective 0001 hours, July 10, 2012, the Trimester 2 directed longfin fishery is closed and vessels issued Federal permits for longfin are prohibited from possessing or landing more than 2,500 lb (1.13 mt) of longfin through August 31, 2012. The Trimester 3 longfin fishery will open at 0001 hours, September 1, 2012.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the directed longfin fishery until August 31, 2012, under current regulations. The regulations at § 648.24 require such action to ensure that longfin vessels do not exceed the 2012 Trimester 2 quota. Data indicating the longfin fleet will have landed at least 90 percent of the 2012 Trimester 2 quota have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the quota for Trimester 2 will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: July 6, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–16917 Filed 7–6–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 132
Tuesday, July 10, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–12–0022]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was last reapportioned in 2009. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3 years and adjustments are made accordingly. This proposed change would result in an increase in Board membership for one State, increasing the total number of Board members from 69 to 70. These changes would be reflected in the Soybean Promotion and Research Order (Order) and would be effective for the 2013 appointment process.

DATES: Comments must be received by September 10, 2012.

ADDRESSES: Comments should be posted online at *www.regulations.gov*. Comments received will be posted without change, including any personal information provided. All comments should reference the docket number, AMS–LS–12–0022; the date of submission; and the page number of this issue of the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Director, Marketing Programs Division, Livestock and Seed Program, Agricultural Marketing Service (AMS), Department of Agriculture (USDA), Room 2628–S, STOP 0251, 1400 Independence Avenue SW., Washington, DC 20250–0251; or via Fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at *www.regulations.gov*. Comments must be received by September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Director, Marketing Programs Division, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or email to *Kenneth.Payne@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was last reapportioned in 2009. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. As such, these changes will not impose a significant impact on persons subject to the program.

There are an estimated 589,182 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most of whom would be considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581–0093.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established an initial Board with 60 members. For purposes of establishing the Board, the United States was divided into 31 States and geographical units. Representation on the Board from each unit was determined by the level of production in each unit. The initial Board was appointed on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary of Agriculture (Secretary) modification

in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

The Board was last reapportioned in 2009. The total Board membership increased from 68 to 69 members, with Ohio gaining one additional member. This change was effective with the 2010 appointments.

Currently, the Board has 69 members representing 30 geographical units. This membership is based on average production levels for the years 2001–2005 (excluding crops in years that production was the highest and that production was the lowest) as reported by USDA's National Agricultural Statistics Service (NASS).

This proposed rule would increase total membership on the Board from 69 to 70. Production data for years 2007–2011 (excluding the crops in years in which production was the highest and in which production was the lowest) was gathered from NASS. This change would not affect the number of geographical units.

This proposed rule would adjust representation on the Board as follows:

State	Current representation	Proposed representation
Mississippi	2	3

Board adjustments as proposed by this rulemaking would become effective, if adopted, with the 2013 appointment process.

List of Subjects in 7 CFR 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

2. In § 1220.201, the table immediately following paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

* * * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	3
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1
Eastern Region (Florida, Massachusetts, New Jersey Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: July 3, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–16703 Filed 7–9–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–STD–0011]

RIN 1904–AC22

Energy Conservation Standards for Residential Furnace Fans: Public Meeting and Availability of the Preliminary Technical Support Document

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of establishing energy conservation standards for residential furnace fans; the analytical framework, models, and tools that DOE is using to evaluate potential standards for these products; the results of preliminary analyses performed by DOE for these products; the potential energy conservation standard levels derived from these analyses that DOE could consider for these products; and any other issues relevant to the development of energy conservation standards for residential furnace fans. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document

(preliminary TSD), and briefing materials, which are available on the DOE Web site.

DATES: DOE will hold a public meeting on July 27, 2012, from 9 a.m. to 4 p.m. in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar. DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than September 10, 2012. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

As noted above, DOE has prepared an agenda, a preliminary TSD, and briefing materials, which are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html*.

Interested persons may submit comments, identified by docket number EERE–2010–BT–STD–0011 and/or Regulation Identification Number (RIN) 1904–AC22, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FurnFans-2010-STD-0011@ee.doe.gov.* Include the docket number EERE–2010–BT–STD–0011 and/or RIN 1904–AC22 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Residential Furnace Fans, EERE–2010–BT–STD–0011, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, Framework Documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html*. This Web page contains a link to the docket for this notice at *www.regulations.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. Email: *Mohammed.Khan@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority
II. History of Energy Conservation Standards Rulemaking for Residential Furnace Fans
A. Background
B. Current Rulemaking Process
III. Summary of the Analyses Performed by DOE
A. Engineering Analysis
B. Markups To Determine Installed Price
C. Energy Use Analysis
D. Life-Cycle Cost and Payback Period Analyses
E. National Impact Analysis
IV. Public Participation
A. Attendance at Public Meeting
B. Procedure for Submitting Requests to Speak
C. Conduct of Public Meeting
D. Submission of Comments
V. Approval of the Office of the Secretary

I. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] These include products that use electricity for the purposes of circulating air through duct work, hereinafter referred to as ''residential furnace fans'' or simply ''furnace fans,'' the subject of today's notice. (42 U.S.C. 6295(f)(4)(D))

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. Subject to certain criteria and conditions, DOE has authority to establish mandatory energy conservation standards for residential furnace fans. EPCA requires DOE to consider and establish energy conservation standards for residential furnace fans by December 31, 2013. (42 U.S.C. 6295(f)(4)(D))

EPCA provides criteria for prescribing new energy conservation standards for residential furnace fans. More specifically, DOE is required to consider standards for these products that: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

(2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a candidate standard is economically justified, DOE will, after receiving comments on the candidate standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, using the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;
3. The total projected amount of energy savings likely to result directly from the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

EPCA also directs that DOE may not prescribe an amended or new standard if the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time that the standard is prescribed. (42 U.S.C. 6295(o)(4))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product. DOE is publishing this document to announce the availability of the preliminary TSD, which details the preliminary analyses, discusses the comments DOE received from interested parties on the Framework Document, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

II. History of Energy Conservation Standards Rulemaking for Residential Furnace Fans

A. Background

There are no current energy conservation standards for residential furnace fans. EPCA, as amended by the Energy Policy Act of 2005 (EPACT 2005), provided DOE authority to consider and prescribe new energy conservation standards for electricity used for purposes of circulating air through duct work by December 31, 2013. (42 U.S.C. 6295(f)(4)(D)) DOE interprets this statutory language as allowing DOE to cover the electricity used by any electrically-powered device used in residential central heating, ventilation, and air-conditioning (HVAC) systems for the purpose of circulating air through duct work.

B. Current Rulemaking Process

In initiating this rulemaking, DOE prepared a Framework Document, ''Rulemaking Framework for Furnace Fans,'' which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for residential furnace fans. DOE published a notice that announced both the availability of the Framework Document and a public meeting to discuss the proposed analytical framework for the rulemaking. That notice also invited written comments from the public. 75 FR 31323 (June 3, 2010). The Framework Document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnace_fan_framework_only_06-4-10v3.pdf*.

DOE held a public meeting on June 18, 2010, at which it presented the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting. The participants discussed the following major topics: (1) Issues pertaining to the scope of coverage of the current rulemaking; (2) product classes; (3) analytical approaches and methods used in the rulemaking; (4) impacts of standards and burden on manufacturers; (5) technology options; (6) distribution channels, shipments, and end users; (7) impacts of outside regulations; and (8) environmental issues.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD, available at the web address given in section III below and in the **ADDRESSES** section of this notice, summarizes and addresses the comments received in response to the Framework Document.

III. Summary of the Analyses Performed by DOE

For the residential furnace fans covered in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) life-cycle cost and payback period; and (4) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html*.

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the LCC subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the notice of proposed rulemaking (NOPR).

A. Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer selling price and product efficiency levels that DOE is evaluating as potential energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline product'' refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. DOE

used these inputs to develop manufacturer selling prices for the baseline and more-efficient designs. Later, in the markups analysis to determine the installed price, DOE converts these manufacturer selling prices into installed prices. In the preliminary TSD, section 2.5 of chapter 2 and chapter 5 each provide details on the engineering analysis and the derivation of the manufacturer selling prices.

B. Markups To Determine Installed Price

DOE derives the installed prices for products based on manufacturer markups, distributor markups, contractor markups, and sales taxes. In deriving these markups, DOE determined the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in each distribution channel. In the preliminary TSD, section 2.6 of chapter 2 and chapter 6 provide detail on the estimation of markups.

C. Energy Use Analysis

DOE carries out the energy use analysis to estimate the energy consumption of the residential furnace fans installed in the field. Details of the energy use analysis are provided in section 2.7 of chapter 2 and chapter 7 of the TSD.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of the furnace fan to the customer over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the product likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating cost of the product (energy cost, water and wastewater cost, and maintenance and repair cost); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency products through savings in the operating cost of the product. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to baseline product, by the annual savings in operating costs. Section 2.8 of chapter 2 and chapter 8 of the preliminary TSD provide details on the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for residential furnace fans as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined from 2018–2047. The analysis period is 30 years long, which is consistent with other rulemakings and sufficiently long to cover the expected life of the product. The analysis period begins in 2018, the expected year of compliance with the new standard. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, product retirement rates (based on estimated product lifetimes), product installed costs and operating costs, product annual energy consumption, and discount rates. Section 2.10 of chapter 2 and chapter 10 of the preliminary TSD provide details on the NIA.

IV. Public Participation

DOE invites input from the public on all the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule establishing any new energy conservation standards will contain the final analytical results and be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans.html*. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by September 10, 2012 comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for residential furnace fans.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses, and prepare a NOPR. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPM. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

You can attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *https://www1.gotomeeting.com/register/*

914344761. Participants are responsible for ensuring their computer systems are compatible with the webinar software.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before 4 p.m., July 23, 2012. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., July 23, 2012.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this NOPM between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this NOPM. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2010–BT–STD–0011 and/or RIN 1904–AC22 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPM.

Issued in Washington, DC, on June 28, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–16816 Filed 7–9–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 120411407–2407–01]

RIN 0625–AA91

Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information

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 regulations which define ''factual information'' and establish time limits for the submission of factual information in antidumping (AD) and countervailing duty (CVD) proceedings. The modifications to the definition of

factual information, if adopted, will more clearly describe the types of information that can be submitted by a person or placed on the record by the Department in a segment of a proceeding. The modifications to the time limits in which such information may be submitted or placed on the record, if adopted, will enable the Department to efficiently determine what type of information is being submitted and whether it is timely filed, and to provide sufficient opportunity for the Department to review submissions of factual information.

DATES: To be assured of consideration, comments must be received no later than August 24, 2012.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov*, Docket No. ITA–2011–XXXX, 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 Paul Piquado, 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–AA91.

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, email address: *webmaster-support@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482–5052 or Charles Vannatta at (202) 482–4036.

SUPPLEMENTARY INFORMATION:

Background

The Department proposes to modify two regulations related to AD and CVD proceedings: The definition of factual information, 19 CFR 351.102(b)(21), and the time limits for the submission of factual information, 19 CFR 351.301. Currently, 19 CFR 351.102(b)(21) defines factual information as: ''(i) initial and supplemental questionnaire responses; (ii) data or statements of fact in support of allegations; (iii) other data or statements of facts; and (iv) documentary evidence.'' The Department proposes modifying this definition in order to create distinct descriptive categories of factual information that can be submitted in a segment of a proceeding.

The proposed rule identifies five categories of factual information, which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The proposed definition does not change the types of information that can be submitted in a segment of a proceeding; rather, it will allow for more accurate classification of factual information than the current definition.

Currently, 19 CFR 351.301 sets forth the time limits for submission of factual information, including general time limits, time limits for certain submissions such as responses to questionnaires, and time limits for certain allegations. The Department proposes to modify 19 CFR 351.301 so that, rather than providing general time limits, there will be specific time limits based on the type of factual information being submitted, in accordance with the proposed changes to 19 CFR 351.102(b)(21). This will enable the Department to review and analyze the factual information at the appropriate stage in the proceeding, based on the Department's experience in administering the AD and CVD laws, rather than being required to review large amounts of factual information on the record of a proceeding when it is too late to adequately examine, analyze, conduct follow-up inquiries regarding and, if necessary, verify the information. This modification will also provide clarity to persons concerning the deadlines for submissions of certain factual information in a segment of a proceeding, including the submission of factual information to rebut, clarify, or correct factual information that is already on the record.

The Department also proposes to require any person, when submitting factual information, to specify under which subsection of proposed § 351.102(b)(21) the information is being submitted and if the information is submitted to rebut, clarify, or correct factual information already on the record, in order to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. This will enable the Department and interested parties to efficiently identify the factual information and to analyze it in accordance with the purpose for which it is being submitted.

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes Executive Order 12866.

Initial Regulatory Flexibility Analysis (IRFA)

Pursuant to Section 603 of the Regulatory Flexibility Act, the Department has prepared the following IRFA to analyze the potential impact that this proposed rule, if adopted, would have on small entities.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the preamble of this document, and not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This proposed rule is intended to alter the Import Administration's regulations for AD and CVD proceedings; specifically, to change the definition of factual information and the deadlines for submitting information in AD and CVD proceedings.

The proposed rule would alter several deadlines for submitting factual information in a segment of a proceeding. Information submitted to rebut, clarify, or correct factual information would generally have a deadline of 10 days from the date that the factual information is served on the interested party or filed with the Department, except that information submitted to rebut, clarify, or correct information in an initial questionnaire response would be due 14 days after the initial response is filed with the

Department. Factual information voluntarily provided to support allegations regarding market viability and the basis for determining normal value would be due 10 days after the respondent interested party files the response to the relevant section of the questionnaire. Factual information provided to support an allegation of an upstream subsidy would be due 60 days after the preliminary determination.

Deadlines for submissions of factual information to value factors of production and to measure the adequacy of remuneration will be imposed or shortened, as appropriate, but this is expected to have a beneficial impact on small entities that participate in AD and CVD proceedings because they will have the opportunity to review and comment on the Department's preliminary analysis of the information, which is not the case under current regulations.

The legal basis for this rule is 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. No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed rules will apply to all persons submitting information to the Department in AD and CVD proceedings. This could include exporters and producers of merchandise subject to AD and CVD proceedings and their affiliates, importers of such merchandise, domestic producers of like products, and foreign governments.

Exporters and producers of subject merchandise are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business Administration (SBA) small business size standard. The Department is not able to estimate the number of exporters and producer domestic affiliates that may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. The Department does not anticipate that the proposed rules will impact a substantial number of small importers because importers of subject merchandise who are not also producers and exporters (or their affiliates) rarely submit factual information in the course of the Department's AD and CVD proceedings, and those that do tend to be larger entities.

Some domestic producers of like products may be considered small entities under the appropriate SBA small business size standard. Although it is unable to estimate the number of producers that may be considered small entities, the Department does not anticipate that the number affected by the proposed rule will be substantial. Frequently, domestic producers that bring a petition account for a large amount of the domestic production within an industry, so it is unlikely that these domestic producers will be small entities.

In sum, while recognizing that exporter and producer affiliates, importers, and domestic producers that submit information in AD and CVD proceedings will likely include some small entities, the Department, based on its experience with these proceedings and the participating parties, does not anticipate that the proposed rule would impact a substantial number of small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed rules will require persons submitting factual information to the Department to specify under which subsection of the proposed definition the information is being submitted. If it is being submitted to rebut, clarify, or correct factual information already on the record, the person will be required to identify the information already on the record that the factual information seeks to rebut, clarify or correct. This will not amount to a significant burden as the submitter should already be aware of the relevant subsection pursuant to which it is submitting factual information; in addition, all of the required information should be readily available to any person submitting factual information to the Department.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

As required by 5 U.S.C. 603(c), the Department's analysis considered significant alternatives. The alternatives which the Department considered include: (1) The preferred alternative of modifying the definition of factual information and modifying the time limits, as described in this proposed rule; (2) maintaining the existing definition of factual information and the time limits for the submission of factual information; (3) modifying the definition of factual information but maintaining all time limits; and, (4) modifying the definition of factual information and extending the time limits.

The Department does not anticipate that the first, preferred alternative will have a significant economic impact on small entities. The changes to the definition of ''factual information'' do not impose any significant burden on the parties in AD or CVD proceedings; the changes do not alter the types of information that may be submitted, but merely re-categorizes them into more logical groupings than the current definition. The changes to the deadlines for submitting factual information are also not expected to have a significant economic impact on small entities. Although some deadlines are shortened, these are either not expected to have a significant impact on small entities or will actually have a positive impact. For example, for the submission of factual information in support of allegations, or to rebut, clarify, or correct factual information, in the Department's experience the parties submitting these allegations or rebuttals/clarifications/corrections will possess the relevant information with sufficient time to submit them before the information would be due.

By contrast, shortening the time limits for the submission of factual information to value factors of production will have a beneficial impact on any small entities that are participating in an AD proceeding, because it will provide them with an opportunity to review and comment on the Department's preliminary analysis of this information. Because the time limits currently permit such information to be submitted after the Department issues its preliminary calculations, parties wishing to assess the significance of this information would need to undertake their own analysis of the often voluminous information submitted. Such analysis of the often voluminous information may be particularly burdensome for small entities. In addition, parties continue to have a significant amount of time to gather this type of information in advance of the time limit because the Department accepts only publicly available information pursuant to this provision. Further, establishing a time limit for the submission of factual information to measure the adequacy of remuneration under § 351.511(a)(2), where the current regulation does not include any time limit, will provide certainty to parties, including those who

wish to submit factual information to rebut, clarify or correct the factual information submitted under this provision.

Under alternative two, the Department determined that maintaining the definition of factual information and the time limits provision would not serve the objective of the proposed rules to permit the Department and interested parties adequate opportunity to review and analyze submissions of factual information in an efficient manner. If the Department were to maintain the current rules, then persons would still be able to submit large amounts of factual information on the record of an AD or CVD segment very close to the Department's statutory deadlines for making certain determinations, thus limiting the Department's ability to consider, analyze and, if applicable, verify the information submitted. The current definition and time limits also do not provide sufficient clarity to persons participating in an AD or CVD proceeding, because the current rules do not require persons submitting information to identify the type of information which is being submitted. Although this alternative was considered, it was not adopted because it does not serve the Department's objectives of creating certainty for participants in AD and CVD proceedings.

The Department also considered modifying the definition of factual information without modifying the time limits provision, listed as alternative three. This alternative would serve the objective of the proposed rules to identify more clearly the types of factual information which are submitted in AD and CVD proceedings, but does not serve the goal of enabling the Department to efficiently examine factual information at an appropriate stage in the proceeding. For instance, the Department determined that continuing to allow factual information in an AD or CVD investigation ''seven days before the date on which verification of any person is scheduled to commence,'' 19 CFR 351.301(b)(1), would run counter to the objectives of the proposed rules because the Department often does not have sufficient opportunity to review adequately submissions of factual information when they are submitted at this stage of the proceeding. In addition, maintaining the time limits for, for instance, the submission of factual information to value factors could deprive persons of the opportunity to comment on the Department's preliminary analysis of these submissions in their case briefs. The changes to the definition to more clearly describe the types of factual information which is submitted in an AD and CVD proceeding, without a corresponding modification to the time limits provision, would not serve the objectives of the Department and, thus, has not been adopted.

Finally, as alternative four, the Department considered extending the time limits for the submission of factual information, but this alternative has not been adopted. The Department is required to make certain determinations for AD and CVD proceedings within prescribed statutory deadlines. The current regulations sometimes do not provide the Department with a sufficient opportunity to examine and analyze submissions of factual information before those statutory deadlines, and in some instances deprive parties of the opportunity to comment on the submissions of factual information in their case briefs. An extension of time limits would exacerbate the problem, which the proposed rules seek to address. Therefore, this alternative has not been adopted.

Paperwork Reduction Act

This rule does not require 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: July 2, 2012.

Paul Piquado,

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 § 351.102, revise paragraph (b)(21) to read as follows:

§ 351.102 Definitions.

* * * * *

(b) *Definitions.* * * *

(21) *Factual information.* ''Factual information'' means:

(i) Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(ii) Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(iii) Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;

(iv) Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and

(v) Evidence, including statements of fact, documents, and data, other than factual information described in (i)–(iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.

3. In § 351.301, revise paragraph (a), (b) and (c), and remove paragraph (d) to read as follows:

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* This section sets forth the time limits for submitting factual information, as defined by § 351.102(b)(21). The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding or provide additional opportunities to submit factual information. Section 351.302 sets forth the procedures for requesting an extension of such time limits, and provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established in the Department's regulations. Section 351.303 contains the procedural rules regarding filing (including procedures for filing on non-business days), format, translation, service, and certification of documents. In the Secretary's written request to an interested party for a response to a questionnaire or for other factual

information, the Secretary will specify the following: The time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit the requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(b) *Submission of factual information.* Every submission of factual information must be accompanied by a written explanation identifying the subsection of § 351.102(b)(21) under which the information is being submitted.

(1) If an interested party states that the information is submitted under subsection § 351.102(b)(21)(v), the party must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i)–(iv).

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted.

(c) *Time limits.* The type of factual information determines the time limit for submission to the Department.

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under § 351.204(d)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302(d)).

(i) Initial questionnaire responses are due 30 days from the date of receipt of such questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted.

(ii) Supplemental questionnaire responses are due on the date specified by the Secretary.

(iii) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary.

(iv) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(v) *Factual information submitted to rebut, clarify, or correct questionnaire responses.* Within 14 days after an initial questionnaire response and within 10 days after a supplemental questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction. The Secretary will reject any untimely filed rebuttal, clarification, or correction submission and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302). If insufficient time remains before the due date for the final determination or final results of review, the Secretary may specify shorter deadlines under this section.

(2) *Factual information submitted in support of allegations.* Factual information submitted in support of allegations must be accompanied by a summary, not to exceed five pages, of the allegation and supporting data.

(i) *Market viability and the basis for determining normal value.* Allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.

(ii) *Sales at prices below the cost of production.* Allegations of sales at prices below the cost of production made by the petitioner or other domestic interested party are due within:

(A) In an antidumping investigation, on a country-wide basis, 20 days after the date on which the initial questionnaire was issued to any person, unless the Secretary alters this time limit; or, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(B) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(C) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(iii) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(iv) *Countervailable subsidy; upstream subsidy.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, unless the Secretary extends this time limit for good cause; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(C) Exception for upstream subsidy allegation in an investigation. In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than 60

days after the date of the preliminary determination.

(v) *Other allegations.* An interested party may submit factual information in support of other allegations not specified in subsections (i)–(iv). Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection. If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is served on an interested party.

(3) *Factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).*

(i) *Antidumping or countervailing duty investigations.* All submissions of factual information to value factors of production under § 351.408(c) in an antidumping investigation, or to measure the adequacy of remuneration under § 351.511(a)(2) in a countervailing duty investigation, are due no later than 30 days before the scheduled date of the preliminary determination;

(ii) *Administrative review, new shipper review, or changed circumstances review.* All submissions of factual information to value factors under § 351.408(c), or to measure the adequacy of remuneration under § 351.511(a)(2), are due no later than 30 days before the scheduled date of the preliminary results of review; and

(iii) *Expedited antidumping review.* All submissions of factual information to value factors under § 351.408(c) are due on a date specified by the Secretary.

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit arguments or publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is served on the interested party. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this subsection. Additionally, all factual information submitted under this subsection must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

(4) *Factual information placed on the record of the proceeding by the Department.* The Department may place factual information on the record of the proceeding at any time. An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary.

(5) *Factual information not directly responsive to or relating to paragraphs (1)–(4).* This subsection applies to factual information other than that described in § 351.102(b)(21)(i)–(iv). The Secretary will reject information filed under this subsection that satisfies the definition of information described in § 351.102(b)(21)(i)–(iv) and that was not filed within the deadlines specified above. All submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in § 351.102(b)(21)(i)–(iv), and must provide a detailed narrative of exactly what information is contained in the submission and why it should be considered. The deadline for filing such information will be 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier, and 30 days before the scheduled date of the preliminary results in an administrative review, or 14 days before verification, whichever is earlier.

(i) Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection.

(ii) If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

[FR Doc. 2012–16715 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 013–2012]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the Department of Justice, has published a notice of a new Privacy Act system of records, JUSTICE/FBI–022, the FBI Data Warehouse System. In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to avoid interference with the national security and criminal law enforcement functions and responsibilities of the FBI. Public comment is invited.

DATES: Comments must be received by August 9, 2012.

ADDRESSES: Address all comments to the Privacy Analyst, Privacy and Civil Liberties Office, National Place Building, 1331 Pennsylvania Ave. NW., Suite 1000, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. on your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov* and you may also comment by using the *http://www.regulations.gov* comment form for this regulation. Please include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your

name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all personally identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Kristin Meinhardt, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: In the Notice section of today's **Federal Register**, the FBI has established a new Privacy Act system of records, the FBI Data Warehouse System, Justice/FBI–022. The system serves as a repository for FBI information and for information lawfully received from other agencies and permits the comparison of data sets in order to provide a more complete picture of potential national security threats or criminal activities. The FBI is also deleting the system of records notice for the Data Integration and Visualization System (DIVS), published at 75 FR 53342 (Aug. 31, 2010) and modified at 75 FR 66131 (Oct. 27, 2010) because the Data Warehouse System will now also cover information that was covered by the DIVS SORN.

In this rulemaking, the FBI proposes to exempt the Data Warehouse System, Justice/FBI–022, from certain provisions of the Privacy Act in order to avoid interference with the law enforcement, intelligence and counterintelligence, and counterterrorism responsibilities of the FBI as established in federal law and policy. The FBI is also replacing the exemption regulation for DIVS with this proposed rule because that system will now be covered by Justice/FBI–022 and this proposed rulemaking. The exemption regulation for DIVS will stay in effect until this rule is final.

Regulatory Flexibility Act

This proposed rule relates to individuals rather than small business entities. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/archive/sum_sbrefa.html*.

The Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There is no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system are created by the FBI or other law enforcement and intelligence entities and sharing of this information electronically will not increase the paperwork burden on the public.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 103–3, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMBRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 524; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

2. In § 16.96, revise paragraphs (v) and (w) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(v) The following system of record is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act:

(1) FBI Data Warehouse System, (JUSTICE/FBI–022).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Where compliance with an exempted provision could not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the DOJ in its sole discretion may waive an exemption in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the DOJ in its sole discretion may impose any restrictions deemed advisable by the DOJ (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

(w) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any law enforcement or national security investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to circumvent the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting of disclosures provision of subsection (c)(3).

(3) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise sensitive information classified to protect national security; disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; could provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases with subjects of the information.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. The relevance and utility of certain information that may have a nexus to terrorism or other crimes may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI.

(5) From subsection (e)(2) and (3) because application of this provision could present a serious impediment to efforts to solve crimes and improve national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI. Further, greater specificity of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained during the scope of an investigation. Further, some of the records in this system come from other agencies and it would be administratively impossible for the FBI to vouch for the compliance of these agencies with this provision.

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(9) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 19, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2012–16822 Filed 7–9–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0518]

RIN 1625–AA00

Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay, Santa Rosa Beach, FL. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main. Entry into or transiting in this zone, during daylight hours, will be prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Mobile or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 9, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0518 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed

rule, call or email LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Management Division; telephone (251) 441–5940 or email *Lenell.J.Carson@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
GICW Gulf Intracoastal Waterway
COTP Captain of the Port
LLNR Light List Number

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2012–0518), 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 at *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, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0518) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 proposed rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0518) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this proposed rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Basis and Purpose

A 36″ subaqueous water main is being constructed across the Choctawhatchee Bay to improve water system delivery. The water main will cross the GICW, a federally maintained navigable channel. Construction of the water main and the required use of turbidity silt curtains pose significant safety hazards to both vessels and mariners operating in or near the GICW. The COTP Mobile proposes to establish a temporary safety zone for a portion of GICW in Choctawhatchee Bay, Santa Rosa Beach, FL. This proposed temporary safety zone is deemed necessary to protect persons and vessels during construction of the water main across the GICW. The legal basis and authorities for this proposed rule are found in 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; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

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

C. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone for a portion of the GICW in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy ''26'' (LLNR 31510), to include the entire width of the channel. This proposed rule will protect the safety of life and property in this area. Entry into or transiting in this zone, during daylight hours, will be 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 proposed safety zone will be effective for the months of August and September 2012. The COTP Mobile anticipates that this proposed rule will be enforced during daylight hours for approximately seven (7) days sometime between August and September 2012. If the final dates are determined, dates and times will be published in the temporary final rule. The Coast Guard will issue broadcast notice to mariners and local notice to mariners of the exact dates of enforcement of the regulation.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and

Budget has not reviewed it under those Orders.

The temporary safety zone listed in this proposed rule will only restrict vessel traffic from entering or transiting a small portion of the GICW during daylight hours. The effect of this regulation will not be significant for several reasons: (1) The COTP Mobile will issue maritime advisories widely available to users of the waterway; (2) this proposed rule will only affect vessel traffic during daylight hours and that are subject to transiting the GICW due to draft restrictions; 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.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the affected portion of the GICW during construction of the water main. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone is limited in size, is of short duration and shallow draft vessel traffic may pass safely around the temporary safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule would economically affect it.

3. Assistance for Small Entities

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

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. 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.

9. 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This 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.

12. Energy Effects

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

13. Technical Standards

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

14. 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 which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety for the public and is not expected to result in any significant adverse environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph 34(g) of Figure

2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08–0518 to read as follows:

§ 165.T08–0518 Safety Zone; Choctawhatchee Bay; Santa Rosa Beach, FL.

(a) *Location.* The following area is a temporary safety zone: a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy ''26'' (LLNR 31510), to include the entire width of the channel.

(b) *Effective dates.* This regulation is effective from August 1, 2012 to September 30, 2012. The Coast Guard will issue broadcast notice to mariners and local notice to mariners of the exact dates of enforcement of the regulation.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 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 not restricted to navigation in the Gulf Intracoastal Waterway by draft and that can safely do so, may pass around the zone while maintaining a safe distance and transiting at slowest safe navigational speed.

(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: June 8, 2012.

D.J. Rose,

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

[FR Doc. 2012–16788 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0574]

RIN 1625–AA00

Safety Zone; ESI Ironman 70.3 Augusta Triathlon, Savannah River; Augusta, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Savannah River in Augusta, Georgia during the ESI Ironman 70.3 Augusta Triathlon on Sunday, September 30, 2012. The temporary safety zone would be necessary for the safety of the race participants, participant vessels, spectators, and the general public during the 1.1 mile swim portion of the competition. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the temporary safety zone unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 9, 2012. Requests for public meetings must be received by the Coast Guard on or before July 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0574 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer William N. Franklin, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912–652–4353, email *William.N.Franklin@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:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at *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, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0574) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0574) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before July 15, 2012 using one of the 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**.

B. Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. The purpose of the proposed rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public during the ESI Ironman 70.3 Augusta.

C. Discussion of Proposed Rule

On Sunday, September 30, 2012, the ESI Ironman 70.3 Augusta Triathlon is scheduled to take place in Augusta, Georgia. This event includes a 1.1 mile swim that will take place on the waters of the Savannah River. The swim starts at the 6th Street Railroad Bridge and finishes at Mile Post 198.

The temporary safety zone will encompass certain waters of the Savannah River in Augusta, Georgia. The temporary safety zone will be enforced from 7 a.m. until 11:59 a.m. on September 30, 2012. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Savannah or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for only 5 hours; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Savannah or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Savannah or a designated representative; and (4) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Savannah River encompassed within the temporary safety zone from 7 a.m. until 11:59 a.m. on September 30, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would 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 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.

3. Assistance for Small Entities

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

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. 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.

9. 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.

10. Protection of Children From Environmental Health Risks

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.

11. 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.

12. Energy Effects

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

13. Technical Standards

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

14. 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. This proposed rule involves the establishment of a temporary safety zone on the waters of the Savannah River that will be enforced for a total of five hours. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07–0574 to read as follows:

§ 165.T07–0574 Safety Zone; ESI Ironman 70.3 Augusta Triathlon, Savannah River, Augusta, GA.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Savannah River encompassed within an imaginary line connecting the following points: starting at Point 1 in position 33°28′44″ N, 81°57′53″ W; thence northeast to Point 2 in position 33°28′50″ N, 81°57′50″ W; thence southeast to Point 3 in position 33°27′51″ N, 81°55′36″ W; thence southwest to Point 4 in position 33°27′47″ N, 81°55′43″ W; thence northwest back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Savannah in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via

VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 7 a.m. until 11:59 a.m. on September 30, 2012.

Dated: June 25, 2012.

J.B. Loring,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2012–16793 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–CHATA–10187; 5340–SZM]

RIN 1024–AD94

Special Regulations; Areas of the National Park System, Chattahoochee River National Recreation Area, Bicycle Routes

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to designate certain multi-use pathways in Chattahoochee River National Recreation Area as routes for bicycle use. National Park Service regulations require promulgation of a special regulation to designate routes for bicycle use off park roads and outside developed areas. Several segments of multi-use pathways at Chattahoochee River National Recreation Area have been, or are planned to be, constructed as part of an effort to replace eroded social trails with sustainable trail systems. Allowing bicycling on the new trail system will improve connectivity to regional trail networks, enhance opportunities for non-motorized enjoyment of the park, and encourage the use of alternate transportation by park visitors and staff.

DATES: Comments must be received by September 10, 2012.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AD94, by any of the following methods:

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

—*Mail:* Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Sandy Springs, GA 30350.

—*Email:* chat_superintendent@nps.gov.

—*Fax:* (770) 399–8087.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Rick Slade, Chief of Science and Resource Management, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Sandy Springs, GA 30350 (678) 538–1321.

SUPPLEMENTARY INFORMATION:

Background

In 1973, the State of Georgia enacted the Metropolitan River Protection Act (MRPA) to ensure the protection of the corridor located within 2,000 feet of each bank of the Chattahoochee River, or the corridor located within the 100-year floodplain, whichever is larger. Five years after the enactment of the MRPA, the United States Congress found that the:

> Natural, scenic, recreation, historic, and other values of a forty-eight mile segment of the Chattahoochee River and certain adjoining lands in the State of Georgia from Buford Dam downstream to Peachtree Creek are of special national significance, and that such values should be preserved and protected from developments and uses which would substantially impair or destroy them. (16 U.S.C. 460ii)

On August 15, 1978, President Jimmy Carter signed legislation creating the Chattahoochee River National Recreation Area (CHAT), a unit of the National Park System consisting of ''the river and its bed together with the lands, waters, and interests therein * * *.'' (16 U.S.C. 460ii). The National Park Service (NPS) is responsible for management of this significant stretch of Riverside Park.

In 1984, Congress amended the CHAT's enabling legislation through Public Law 98–568, which declared the corridor located within 2,000 feet of each bank along the 48-mile river segment ''an area of national concern.'' A subsequent amendment, passed in 1999, expanded the authorized boundary of CHAT and provided funding to support acquisition of land-based linear corridors to link existing units of the recreation area and to ensure that they are managed to standardize acquisition, planning, design, construction, and operation of the linear corridors. The NPS manages the 48-mile stretch of the Chattahoochee River from top-of-bank to top-of-bank, including all adjacent land elements that occur below the high water mark. The NPS also manages over 5,000 acres of park land, including riverside units and upland forested areas with hiking trails and other recreational opportunities.

In September 2009, the NPS completed a General Management Plan/Environmental Impact Statement (GMP/EIS). Consistent with 36 CFR 4.30, the GMP/EIS states that bicycles are prohibited except on roads, parking areas, and designated routes, noting that this regulation is especially important in light of comments received during the GMP/EIS process from some visitors who view the park corridor as an opportunity to promote non-motorized and less polluting alternatives to automobiles, such as bicycle use. Public comments during the GMP/EIS process also reflected the desire to increase the use of bicycles off-road in the park through development of an interconnected trail system. The final GMP/EIS describes off-road bicycling on trails as an appropriate use in the developed, natural area recreation, and rustic zones.

Proposed Rule

The proposed rule adds a special regulation for CHAT, designating segments of trails outside of developed areas as routes for bicycle use, as required by the general regulation for bicycle use in the National Park System at 36 CFR 4.30. The proposed rule would designate segments of trails in the Vickery Creek, Johnson Ferry South, and Cochran Shoals units as multi-use trails, allowing both pedestrian and bicycle use.

Vickery Creek Unit

In 2001, the City of Roswell planned and constructed a multi-use paved trail along the Chattahoochee River, a portion of which crosses the Vickery Creek unit of CHAT. Pursuant to the National Environmental Policy Act of 1969 (NEPA), the park completed a

Categorical Exclusion in 2001 that determined there would be minimal impacts from the approximately 500-foot segment of paved multi-use trail that crosses a portion of the Vickery Creek unit. This trail was constructed prior to the GMP/EIS and was consistent with former park planning zones.

Johnson Ferry South Unit

The January 2010 Environmental Assessment Proposed Trail Connection Project (EA) evaluated projects to improve trail connectivity and sustainability within the Bowmans Island West, Johnson Ferry South, and Cochran Shoals park units, including new bicycle access in the Johnson Ferry South and Cochran Shoals units. The selected alternative in the EA for the Johnson Ferry South unit includes construction of a 0.1 mile segment of new trail to connect the existing multi-use trail on a park administrative road to a planned underpass below the Johnson Ferry Road bridge. The existing trail is located on an old dirt farm roadbed that is currently being used by both pedestrians and bicyclists. The addition of the 0.1 mile trail segment will allow bicyclists and pedestrians to connect to an alternative transportation network both within and beyond the park boundary. The portion of the trail within the park will be approximately 2.2 miles long. The new 0.1 mile trail segment will use sustainable design principles including routing along the terrain contours, sloping the trail surface to allow for runoff during rain events, and a natural trail surface. This trail segment was evaluated by the EA, and in March 2010 the park completed a Finding of No Significant Impact (FONSI) which concluded that the selected alternative for the Johnson Ferry South unit will not have a significant adverse effect on the human environment. The Johnson Ferry South unit is zoned in the GMP/EIS as a rustic zone, which identifies off-road bicycling as an appropriate use.

Cochran Shoals Unit

The selected alternative in the EA for the Cochran Shoals unit allows pedestrian-only access on a number of trails, but also incorporates a loop-style multi-use trail for both pedestrians and bicyclists. The project will close and revegetate heavily eroded and unsustainable social trails and construct new trail segments to create a sustainable, aesthetically pleasing trail network. The new trail system will use sustainable design principles, including routing along the terrain contours, sloping the trail surface to allow for runoff during rain events, and a natural trail surface. An existing multi-use trail follows an old farm road for 2.4 miles, where off-road bicycling is currently allowed because the trail is on a park administrative road. The final trail plan has 3 miles of hiking-only trails and 6.7 miles of multi-use trails allowing both pedestrians and bicycles. A public scoping meeting was held on October 29, 2009, and 36 public comments were received, which overwhelmingly supported expanding access for bicycling in the Cochran Shoals unit.

During the EA process, some public comments raised concerns regarding bicyclists and hikers sharing trails in Cochran Shoals, citing safety and erosion issues. Conflicts between pedestrians and bicyclists are primarily caused by the difference in speeds between the users. Bicyclists can often travel at higher speeds, and the speed differential between bicyclists and pedestrians may reduce the communication between the users, startle pedestrians, and increase the odds of conflict. To minimize the potential for conflict, the Cochran Shoals trail network was designed to create a 6.7 mile loop-style system, rather than an out-and-back style trail, thereby reducing traffic and congestion at any given point on the trail. The new loop-style trail also reduces the number of users that could potentially cut through or create unauthorized trails in order to avoid repetitive scenery. In addition, park management will implement directional traffic on the trails in the Johnson Ferry South and Cochran Shoals units to limit bicycle-pedestrian conflicts. The Superintendent will exercise discretion to temporarily close bicycle access to these trails following a rain event to address issues concerning erosion and water quality impacts that were also raised during the EA process.

The FONSI concluded that the selected alternative for the Cochran Shoals unit will not have a significant adverse effect on the human environment. The Cochran Shoals unit is zoned in the GMP/EIS as a natural area recreation zone, which identifies off-road bicycling as an appropriate use.

Compliance With Other Laws, Executive Orders and Department Policy Regulatory Planning and Review (Executive Order 12866 and 13563)

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

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

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). There are no businesses in the surrounding area economically dependent on bicycle use on these trails. The park does not have any bicycle rental concessioners and the users are mainly private individuals using the trails for recreational purposes. This certification is based on the cost-benefit and regulatory flexibility analysis found in the report entitled ''Cost-Benefit and Regulatory Flexibility Analysis: Proposed Regulations for Trail Management in Chattahoochee River National Recreation Area'' which can be viewed on the park's planning Web site, *http://www.nps.gov/chat/parkmgmt/planning.htm,* then clicking on the link entitled ''Chattahoochee River Trail Connection Plan.''

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

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

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or

unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters and has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

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

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

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

Consultation With Indian tribes (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. Representatives of the tribes potentially affiliated with CHAT were contacted during the preparation of the EA for the project.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements, and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because (i) the selected action for the Vickery Creek unit is covered by a categorical exclusion and (ii) we reached a FONSI for the selected actions for the Johnson Ferry South and Cochran Shoals units. We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis of the selected action for the Vickery Creek unit under NEPA. A copy of the EA and FONSI can be downloaded from the park's planning Web site, *http://www.nps.gov/chat/parkmgmt/planning.htm,* then clicking on the link entitled ''Chattahoochee River Trail Connection Plan.''

Effects on the Energy Supply (Executive Order 13211)

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

Clarity of This Regulation

We are required by Executive Orders 12866 (section 1 (b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information: The primary authors of this regulation were Joel Brumm, Chattahoochee River National Recreation Area, and Jay P. Calhoun, Regulations and Special Park Uses, National Park Service.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available 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.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

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

The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201.07 (2001).

1. Add § 7.90 to read as follows:

§ 7.90 Chattahoochee River National Recreation Area.

(a) *Bicycling.* (1) *Where may I ride a bicycle within Chattahoochee River National Recreation Area?* The following routes are designated for bicycle use:

(i) The approximately 500-foot-long segment of paved multi-use trail along the Chattahoochee River located within the boundary of the Vickery Creek unit.

(ii) The approximately 2.2-mile-long multi-use trail in the Johnson Ferry South unit that connects to the bridge underpass at Johnson Ferry Road.

(iii) The approximately 6.7-mile-long loop-style multi-use trail in the Cochran Shoals unit.

(2) *Will the routes be identified on the ground?* Yes, the three trails will be posted at trail junctions indicating they are open to bicycle use.

(3) *Where can I find maps depicting routes designated for bicycle use?* Maps depicting designated bicycle routes are

available in the office of the Superintendent and online at *www.nps.gov/chat/planyourvisit/bike-maps.htm.*

(4) *How will the Superintendent manage the designated bicycle routes?* (i) The Superintendent may open or close designated bicycle routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, carrying capacity and other management activities and objectives.

(ii) Following a rain event, the Superintendent may exercise discretion to temporarily close the trails in the Johnson Ferry South and Cochran Shoals units to mitigate soil erosion and water quality impacts from bicycle use.

(iii) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(iv) Violating a closure or restriction is prohibited.

Dated: June 20, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16702 Filed 7–9–12; 8:45 am]

BILLING CODE 4310–PV–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0468; FRL–9698–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revision for the Control of Volatile Organic Compounds Emissions From Vehicle Refinishing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. The SIP revision amends Maryland's COMAR 26.11.19.23 ''Control of Volatile Organic Compounds Emissions from Vehicle Refinishing'' to establish new volatile organic compounds (VOC) content limits for coating and cleaning solvents used in vehicle refinishing and standards for coating application, work practices, monitoring, and recordkeeping. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 9, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0468 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov*.

C. *Mail:* EPA–R03–OAR–2012–0468, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0468. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Maryland was designated nonattainment with respect to the 1-hour ozone NAAQS on November 15, 1990, with several serious nonattainment areas, including: the Baltimore, Maryland area, the Maryland portion of the Philadelphia-Wilmington-Atlantic City area, and the Maryland portion of the Washington, DC area. Section 182(b)(1) of the CAA requires states with ozone nonattainment areas classified as moderate or above to submit a SIP revision that provides VOC emissions reductions of at least 15 percent from the baseline emissions of 1990. In Maryland, the 15 percent plans (the 15% rate-of-progress plans) were required for the 1-hour ozone nonattainment areas.

Pursuant to this requirement, Maryland revised its SIP on August 4, 1997 to adopt COMAR 26.11.19.23 ''Control of Volatile Organic Compounds Emissions from Vehicle Refinishing.'' The regulation would achieve fully enforceable VOC emissions reductions from vehicle refinishing sources throughout the State of Maryland, which were creditable towards the 15% rate-of-progress plans. The rule, which followed EPA's ''Alternative Control Techniques (ACT) Document: Automobile Body Refinishing'' (EPA–453/R–94–031, April 1994), established standards for vehicle refinishing based on VOC content of coatings, methods for calculating the VOC content of a coating system, and standards for operating, monitoring, reporting, and recordkeeping. The coating categories included: pretreatment coatings, precoatings, primer surfacers, primer sealers, topcoats, multi-stage coating systems, and specialty coatings.

Section 183(e) of the Act authorizes EPA to establish national standards to

reduce VOC emissions from consumer and commercial products, including the automobile refinishing coatings. On September 11, 1998, a final rule ''National Volatile Organic Compound Emissions Standards for Automobile Refinish Coatings'' (EPA's National Rule) was published by EPA under the authority of section 183(e) of the CAA (63 FR 48806), as identified in 40 CFR part 59, subpart B. The federal rule applies to all automobile refinish coatings that are manufactured or imported for sale or distribution in the United States, and sets VOC content limits by automotive refinish category. *See* EPA's August 1998 report ''Volatile Organic Compound Emissions from Automobile Refinishing—Background Information for Promulgated Standards'' (EPA–453/R–96–011b).

On January 9, 2008, EPA published the final rule 40 CFR part 63 subpart HHHHHH ''National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources'' (EPA's 6H NESHAP), which includes automobile refinishing. This Federal rule specifically applies to area sources that engage in paint stripping operations that use methylene chloride (MeCl) containing paint stripping formulations, and in spray application of coatings to motor vehicle and mobile equipment, plastic and or metal substrate, where the coatings contain compounds of chromium, lead, manganese, nickel, or cadmium. Motor vehicle or mobile equipment surface coating operations may petition the EPA's Administrator for an exemption from this rule if the owner or operator can demonstrate, to the satisfaction of the EPA's Administrator, that the spray applied does not include coatings containing any of these compounds. This rule establishes important requirements for these types of facilities, among the following: Training certification of all new and existing personnel who spray surface coatings, minimum training requirements, and installation to all facilities of a filtered spray booth and enclosed spray gun cleaner.

Maryland's 1997 SIP-approved regulation COMAR 26.11.19.23 ''Control of Volatile Organic Compounds Emissions from Vehicle Refinishing'' complies with the federal standards established in EPA's rules. On May 8, 2012, EPA received a revision to the Maryland SIP submitted by the Maryland Department of Environment (MDE). The SIP revision (#12–04) amends Maryland's COMAR 26.11.19.23 ''Control of Volatile Organic Compounds from Vehicle Refinishing,'' in order to establish new standards and requirements for VOC, including: VOC content limits for coatings and solvents, controls on emissions from equipment cleaning, the use of coating application methods, recordkeeping, maintenance activities, and operator training. These amendments are based on the 2009 ''Model Rule for Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations'' (MVMERR) developed in conjunction with member states of the Ozone Transport Commission (OTC). The MVMERR established requirements which comply with those established in EPA's National Rule and 6H NESHAP.

II. Summary of SIP Revision

The proposed SIP revision establishes VOC content limits for automotive coatings and cleaning solvents used in vehicle refinishing, and standards for coating application, work practices, monitoring, and recordkeeping, to be effective for all affected sources as of July 1, 2013. Sources subject to the requirements of this regulation include: auto body and repair facilities, fleet operator repair and paint facilities, new and used auto dealer repair and paint facilities, and after-market auto customizing and detailing facilities located throughout the State of Maryland; manufacturers, suppliers, distributors of coatings and cleaning solvents intended for use and application to motor vehicles, mobile equipment, and associated components within the State of Maryland; and manufacturers, suppliers, and distributors of application equipment and materials storage such as spray booths, spray guns, and sealed containers for cleaning rags for use within Maryland.

The regulation establishes VOC content limits for 11 categories of automotive coatings and two categories of cleaning solvents which are used in the preparation, application, and drying phases of vehicle refinishing. The VOC content limits established for the automotive coatings and solvents exclude water and exempt compounds as listed in 40 CFR 51.100(s), and are provided in Table 1 and Table 2, respectively.

TABLE 1—VOC CONTENT LIMITS FOR AUTOMOTIVE COATINGS FOR MOTOR VEHICLE AND MOBILE EQUIPMENT REFINISHING AND RECOATING VOC CONTENT LIMIT FOR AUTOMOTIVE COATINGS

Coating category	Maximum VOC content	
	lbs/gal	g/L
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.5	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430

TABLE 2—VOC CONTENT LIMITS FOR CLEANING SOLVENTS FOR MOTOR VEHICLE AND MOBILE EQUIPMENT REFINISHING AND RECOATING VOC CONTENT LIMIT FOR CLEANING SOLVENTS

Solvent category	Maximum VOC content	
Cleaning solvent (other than bug and tar removers)	0.21 lbs/gal	25 g/L.
Bug and tar removers**	40% VOC by weight.	

The regulation provides methods for calculating the VOC content of coatings and cleaning solvents and a list of test methods to be used for demonstrating compliance with provisions of this regulation. Instead of complying with the VOC content limits specified, a person subject to this regulation may use an emission control device that has been approved by MDE, which achieves an overall emission control efficiency of 85 percent or greater, as determined in accordance with the approved test methods. The regulation requires using at least one of the approved methods for applying an automotive coating, including: Flow or curtain coating, dip coating, brush coating, cotton-tipped swab application, electrodeposition coating, high volume-low pressure (HVLP) spraying, electrostatic spraying, airless spraying, or an alternate spray equipment method approved by MDE. Work practice standards include procedures for cleaning the spray gun equipment for applying automotive coatings. Affected facilities are also required to keep extensive records on the total amount of coating used, VOC actual and regulatory contents, purchase records, and system operating parameters of any emission control device installed. Additional information concerning EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov*, Docket number EPA–R03–OAR–2012–0468.

III. Proposed Action

The Maryland SIP revision for the control of VOC emissions from vehicle refinishing under Regulation COMAR 26.11.19.23, as adopted by the State of Maryland on March 26, 2012, meets the applicable requirements of the CAA and the applicable EPA regulations. The SIP revision will achieve emission reductions of VOC throughout the State of Maryland. EPA is proposing to approve this Maryland SIP revision submitted on May 8, 2012. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to Maryland's COMAR 26.11.19.23 ''Control of Volatile Organic Compounds Emissions from Vehicle Refinishing,'' does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 27, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–16809 Filed 7–9–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2012–018; Docket 2012–0018, Sequence 1]

RIN 9000–AM27

Federal Acquisition Regulation; Price Analysis Techniques

AGENCY: 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 clarify the use of a price analysis technique in order to establish a fair and reasonable price.

DATES: Interested parties should submit written comments to the Regulatory

Secretariat at one of the addressees shown below on or before September 10, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2012–018 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–018''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–018.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–018'' 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 2012–018, 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. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–018.

SUPPLEMENTARY INFORMATION:

I. Background

FAR 15.404–1(b)(2) addresses various price analysis techniques and procedures the Government may use to ensure a fair and reasonable price. FAR 15.404–1(b)(2)(i) discusses the comparison of proposed prices received in response to a solicitation as an example of such techniques and procedures. In this discussion, FAR 15.404–1(b)(2)(i) references 15.403–1(c)(1), which sets forth the requirements of adequate price competition. However, only 15.403–1(c)(1)(i) actually addresses the situation when two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement. Therefore, the reference in 15.404–1(b)(2)(i) is more appropriately identified as 15.403–1(c)(1)(i).

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have 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 this rule merely clarifies the reference at FAR 15.404–1(b)(2)(i) for the use of the price analysis technique at 15.403–1(c)(1)(i) in order to establish a fair and reasonable price. However, an initial regulatory flexibility analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

This rule amends the FAR at 15.404–1(b)(2)(i) to clarify the use of the price analysis technique at 15.403–1(c)(1)(i) in order to establish a fair and reasonable price. FAR 15.404–1(b)(2) addresses various price analysis techniques and procedures the Government may use to ensure a fair and reasonable price. FAR 15.404–1(b)(2)(i) discusses the comparison of proposed prices received in response to a solicitation as an example of such techniques and procedures. In this discussion, FAR 15.404–1(b)(2)(i) references 15.403–1(c)(1), which sets forth the requirements of adequate price competition. However, only FAR 15.403–1(c)(1)(i) actually addresses the situation when two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement. Therefore, the reference in 15.404–1(b)(2)(i) is more appropriately identified as 15.403–1(c)(1)(i). The proposed rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed 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 2012–018), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: July 3, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 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).

15.404–1 [Amended]

2. Amend section 15.404–1 by removing from paragraph (b)(2)(i) ''15.403–1(c)(1)'' and adding ''15.403–1(c)(1)(i)'' in its place.

[FR Doc. 2012–16709 Filed 7–9–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110321208–1203–01]

RIN 0648–BA89

High Seas Driftnet Fishing Moratorium Protection Act; Identification and Certification Procedures To Address Shark Conservation

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action sets forth identification and certification

procedures established by the Shark Conservation Act to address shark conservation in areas beyond any national jurisdiction. The objectives of these procedures are to promote the conservation and sustainable management of sharks. Agency actions and recommendations under this rule will be in accordance with U.S. obligations under applicable international trade law, including the World Trade Organization (WTO) Agreement. This action would also amend the definition of illegal, unreported, or unregulated (IUU) fishing for purposes of the High Seas Driftnet Fishing Moratorium Protection Act.

DATES: Written comments must be received no later than 5 p.m. Eastern time on August 9, 2012.

NMFS is soliciting feedback on the proposed rule. Information and comments concerning this proposed rule may be submitted by any one of several methods (see **ADDRESSES**). Information related to the international fisheries provisions of the Moratorium Protection Act can be found on the NMFS Web site at *http://www.nmfs.noaa.gov/msa2007/intlprovisions.html.* NMFS will consider all comments and information received during the comment period in preparing a final rule.

ADDRESSES: Written comments on this action, identified by RIN 0648–BA89, may be submitted by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* Laura Cimo, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Laura Cimo, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, at (301) 427–8359.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2011, the National Marine Fisheries Service (NMFS) published a final rule establishing identification and certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources (PLMRs) pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) (76 FR 2011) (50 CFR 300.200 *et seq.*) (16 U.S.C. 1826h–k). The identification and certification procedures must be amended to reflect recent statutory amendments to the Moratorium Protection Act. These amendments were included in the Shark Conservation Act (Pub. L. 111–348), which was enacted on January 4, 2011.

Sharks present an array of challenges for fisheries conservation and management due to their biological characteristics and lack of general data reported on catch of each species. Many shark species are characterized by relatively slow growth, late maturity, and low reproductive rates, which can make them particularly vulnerable to overexploitation and slow to recover. As demand and exploitation rates for some shark species, and particularly for shark fins, have increased, concern has grown regarding the status of many shark stocks and the sustainability of their exploitation in global fisheries.

The United States continues to be a leader in promoting shark conservation and management globally. We are committed to working bilaterally and multilaterally to promote shark conservation and management, and prevent shark finning so that legal and sustainable fisheries are not disadvantaged by these activities. In particular, the United States wants to ensure that its own import market does not encourage unsustainable activity.

Under the amendments in the Shark Conservation Act, the Secretary of Commerce is required to identify a foreign nation if: (a) the nation's fishing vessels are engaged or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and (b) the nation has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding of the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. The amendments also call upon the Secretary of Commerce to begin making identifications no later than January 4, 2012.

NMFS solicited information from the public on activities of fishing vessels from foreign nations engaged in shark catch beyond any national jurisdiction on March 24, 2011 (76 FR 16616), and indicated that it anticipated making the first identifications under this statute by January 4, 2012. However, upon further reflection and review of the statute, NMFS proposes to begin the process of making identifications by January 4, 2012, and publish the first identifications in the January 2013 Biennial Report to Congress, coincident with the next identification process under the IUU fishing and bycatch provisions of the Moratorium Protection Act. This approach is consistent with the statute and will treat all identified nations equally. If identifications were made in January 2012, it would have provided potentially-affected foreign nations only one year to become familiar with the new shark provisions before identification decisions were made and only one year to take the necessary actions to receive a positive certification. NMFS has already started collecting and analyzing information that could help the agency determine which nations may have vessels engaging in fishing activities or practices on the high seas that target or incidentally catch sharks.

The Secretary of Commerce will issue either a positive or negative certification to each nation that is identified in the biennial report to Congress. In the unlikely event that the Secretary of Commerce does not make a certification decision, alternative certification procedures may be applied. A positive certification indicates that the nation has taken the necessary actions pursuant to the Moratorium Protection Act. If an identified nation does not receive a positive certification, fishing vessels of such nation would be, to the extent consistent with international law, subject to the denial of entry into any place in the United States and to the navigable waters of the United States. Additionally, if an identified nation does not receive a positive certification, the Secretary of Commerce shall so notify the President of the United States. This notification may include recommendations to prohibit the importation of certain fish and fish products from the identified nation. The Secretary of Commerce will recommend to the President appropriate measures, including trade restrictive measures, to be taken against identified nations that

have not received a positive certification, to address the fishing activities or practices for which such nations were identified in the biennial report. The Secretary of Commerce will make such recommendations on a case by case basis in accordance with international obligations, including the WTO Agreement. Upon this notification, the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a) authorizes the President to direct the Department of Treasury to prohibit the importation of certain fish and fish products from such nation.

If certain fish and fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the shark catch described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such shark catch or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the WTO.

The final rule establishing identification and certification procedures pursuant to the Moratorium Protection Act (published on January 12, 2011) also set forth a definition of IUU fishing for purposes of the Moratorium Protection Act (50 CFR 300.201). In response to public comments on the rule, NMFS committed to consider amending this regulatory definition in a subsequent rulemaking to make any necessary technical changes and incorporate suggestions made by the public. Through this action, NMFS also proposes to amend the definition of IUU fishing to include fishing activities that violate shark conservation measures required under an international fishery management agreement to which the United States is a party. Amendments to the Identification and Certification Procedures to Address Shark Conservation.

Pursuant to the Shark Conservation Act, NMFS proposes to amend the identification and certification procedures under the Moratorium Protection Act. This will provide for the identification of a foreign nation if fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks, and the nation has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable in effectiveness to that of the United States, taking into account different conditions. When making identification decisions, NMFS will take into account whether the nation has adopted a regulatory program for the conservation and management of sharks in their domestic waters that could have bearing on shark conservation on the high seas. NMFS does not intend to identify nations, or issue a negative certification for identified nations, on the basis of a nation's failure to establish a comparable regulatory program in their domestic waters if the regulatory deficiency is not relevant to the nation's regulation of high seas shark catch. When determining whether a nation could potentially be identified for these activities through the process set forth in final regulations that were published on January 12, 2011 (76 FR 2011), NMFS will review, evaluate and verify relevant information obtained from credible sources by the agency demonstrating that foreign-flagged vessels engaged in fishing activities or practices in areas beyond any national jurisdiction that targeted or incidentally caught sharks during the relevant timeframe. This information could include data gathered by the U.S. Government as well as offered by other nations, international organizations (such as regional fisheries management organizations), institutions, bilateral or other arrangements, or non-governmental organizations.

Corroboration of information may be addressed through cooperation with governments, international organizations, non-governmental organizations, and through use of other credible information as appropriate. NMFS, acting through or in consultation with the State Department, may as appropriate initiate bilateral discussions with the nation whose vessels engaged in such fishing activities to:

- Communicate the provisions of the Moratorium Protection Act to the nation;
- Provide an opportunity for nations to provide additional information on the fishing activities of particular vessels; and
- Determine if the nation has adopted a regulatory program for the conservation of sharks for their vessels fishing on the high seas, including measures to prohibit the removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable in effectiveness to that of the United States, taking into account different conditions.

When making its identification decisions, NMFS will take into account relevant matters, including, but not limited to, the history, nature, circumstances, and gravity of the fishing activities that targeted or incidentally caught sharks in areas beyond any national jurisdiction. NMFS will also take into account any actions taken by the nation that are relevant to the conservation and sustainable management of sharks in areas beyond any national jurisdiction, including:

- If the nation has adopted a regulatory program for the conservation of sharks;
- Participation in cooperative research activities designed to mitigate the impacts of fishing activities that result in the incidental catch of sharks;
- Programs for data collection and sharing, including programs to assess the abundance and status of sharks and observer programs; and
- The adoption and use of strategies, techniques, and equipment for the reduction and mitigation of shark bycatch, if vessels of the nation have shark bycatch.

If any relevant international organization or regional fishery management organization (RFMO) has adopted measures for the conservation and sustainable management of sharks, NMFS will consider whether the nation is a party or cooperating non-party to the organization, and/or whether the nation has implemented such measures.

By January 4, 2012, NMFS began the process of making identifications of nations whose fishing vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks and have not adopted a regulatory program for the conservation of sharks on the high seas, including measures to prohibit removal of any of the fins of the shark (including the tail) and discard the carcass of the shark at sea, that is comparable in effectiveness to that of the United States, taking into account different conditions.

Identifications will be published in the biennial report to Congress, as required by the Moratorium Protection Act. The next biennial report is due to Congress on January 12, 2013.

Nations will be notified of their identification under the Moratorium Protection Act, and NMFS, acting through or in consultation with the State Department, will initiate consultations to encourage identified nations to take the necessary actions pursuant to the Moratorium Protection Act.

Although the Secretary of Commerce is authorized not to issue a certification decision to an identified nation under the Moratorium Protection Act, the Secretary of Commerce will issue either a positive or negative certification to each identified nation, which will be published in the subsequent biennial report to Congress, for all nations that are identified.

In determining whether to issue a positive or negative certification for each identified nation, the Secretary of Commerce, in consultation with the Secretary of State, will take into account all relevant facts and circumstances, including, but not limited to, the record of consultations with such nation, results of these consultations, and actions taken by the nation and any applicable RFMO to address the fishing activities of concern described in the biennial report.

To receive a positive certification, any nation that is identified as having fishing vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks will need to provide documentary evidence of the adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of these measures. In order to receive a positive certification, such nation will also need to establish a management plan that assists in the collection of species-specific data.

When evaluating whether an identified nation whose pelagic longline vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks has adopted a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, the proposed rule would not require the regulatory program to include the mandatory use of circle hooks, as specified for nations identified under Section 610 of the Moratorium Protection Act, since there is scientific uncertainty about the impact of circle hook use on shark bycatch and the United States does not require the use of circle hooks in its fisheries to mitigate shark bycatch.

NMFS will notify nations prior to a formal certification determination, and will provide such nations an opportunity to support and/or refute preliminary certification determinations, and communicate actions taken to adopt a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, taking into account different conditions, and establish a management plan that assists in the collection of species-specific data. The Secretary of Commerce shall consider any relevant information received during consultations when making its formal certification determination.

Changes to the IUU Fishing Definition

NMFS proposes to amend the definition of IUU fishing, consistent with the purposes of the Moratorium Protection Act, in order to more comprehensively address IUU fishing, and thus more effectively address this serious problem that threatens the sustainable management of the world's fisheries.

First, NMFS proposes to amend the IUU fishing definition to clarify its application to fishing activities conducted by fishing vessels of both party and non-party nations to international fishery management agreements to which the United States is a party. The first paragraph of the current IUU fishing definition addresses fishing activities that violate conservation and management measures of an RFMO to which the United States is a party. NMFS proposes to amend this paragraph to clarify that it is intended to apply to nations that are a party to the relevant international fishery agreement. NMFS also proposes to add a new paragraph clarifying that, in the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement can be IUU fishing.

Second, pursuant to the Shark Conservation Act, NMFS proposes to amend the IUU fishing definition to explicitly include fishing activities in violation of shark conservation measures that are required by an RFMO to which the United States is a party.

Third, NMFS proposes to clarify that the IUU fishing definition applies when a nation fails to report or fails to provide accurate or complete data and information regarding its vessels' fishing activities as required by an RFMO to which the United States is a party. By adding an explicit reference to reporting, NMFS intends to highlight the importance of compliance with RFMO data collection requirements to support effective fisheries management.

Fourth, NMFS proposes to amend the IUU fishing definition to include fishing activities conducted by foreign flagged vessels in waters under U.S. jurisdiction without authorization of the United States. Such activities undermine the ability of the United States to sustainably manage its fisheries.

In determining whether to make an IUU fishing identification, NMFS will take into account all relevant information, in accordance with § 300.202(a)(2). In addition, when determining whether to identify a foreign nation for having vessels engaged in fishing activities within the U.S. exclusive economic zone (EEZ) without authorization of the United States, NMFS will consider any actions taken by the United States, the flag State and, where relevant, the international fishery management organization, to address those activities, as well as the effectiveness of such actions.

Application of IUU Fishing Identification Criteria

In addition to the regulatory changes identified above, NMFS is reconsidering the manner in which it has applied Section 609 of the Moratorium Protection Act and its implementing regulations. To date, NMFS has primarily applied this Act and implementing regulations to identify a nation when the nation's vessels were engaged in illegal, unregulated, or unreported fishing activity that was directly attributable to specific vessel conduct. In future identifications, NMFS intends to identify nations based on fishing activity that was illegal, unreported, or unregulated because of either the vessels' conduct or the nation's actions or inactions in managing its fisheries.

After two cycles of identification, NMFS has determined that these provisions could be applied more broadly. In order to more comprehensively address IUU fishing, we must consider not only the prohibited actions of fishing vessels but also non-compliance in the form of action or inaction at the national level that leads to IUU fishing. To further this goal, NMFS is proposing to identify a nation based on the nation's actions or inactions that lead to fishing by vessels registered under their flag that is not in

accordance with RFMO conservation and management measures. For example, under this approach, NMFS could identify a nation when the nation has failed to implement measures that are required by an RFMO to which the United States is a party, and as a result the fishing vessels of that nation operated in a manner inconsistent with the relevant RFMO conservation and management measures.

This approach is consistent with the plain language of the statutory guidelines provided in Section 609(e)(3)(A) of the Moratorium Protection Act for the IUU fishing definition. These statutory guidelines specifically mention certain RFMO conservation and management measures, such as catch limits or quotas, that must be implemented by nations that are parties to the RFMO and cannot necessarily be attributed to specific fishing vessels. For example, RFMOs can establish quotas for their member nations. Each nation bears the responsibility for implementing and adhering to the quota it received. Individual fishing vessels, therefore, cannot be found in violation of the RFMO's quota, but action or inaction by the flag nation could result in fishing activity in violation of the quota. In addition to specific situations mentioned in the minimum statutory guidelines for the IUU fishing definition, there are other circumstances in which fishing activities might violate RFMO measures because of a nation's failure to govern its own fishing vessels or carry out its own responsibilities. For example, RFMOs require parties to implement data reporting requirements. In most cases, the nations, and not individual vessels, compile and report the requisite information to comply with RFMO conservation and management measures. Because many measures are inherently a nation's responsibility, Congress evidently intended NMFS to be able to identify a nation based on its failure to fulfill the requirements of the relevant RFMO and the operations of the nation's fisheries in light of this failure.

Under the proposed approach, a nation could be identified for fishing activities that were illegal, unregulated, or unreported because of national action or inaction, including, consistent with the examples discussed above, fishing activities that resulted in the nation exceeding a harvest quota granted by the relevant RFMO because the nation failed to implement measures to prevent such overharvest, and fishing activities that were not reported because the nation failed to carry out its responsibilities for reporting to ensure collection of such information.

Classification

This proposed rule is published under the authority of the Moratorium Protection Act, 16 U.S.C. 1826d–1826k, as amended by the Shark Conservation Act (Pub. L. 111–348).

This proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

Pursuant to section 605 of the Regulatory Flexibility Act, the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. In this rulemaking, NMFS proposes to amend the identification and certification procedures under the Moratorium Protection Act to prevent shark finning and to promote the conservation and sustainable harvest of sharks by fishing vessels of foreign nations, as required under the Shark Conservation Act (Pub. L. 111–348).

A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. Briefly, under the proposed regulations, NMFS would identify a foreign nation in a biennial report to Congress if fishing vessels of that nation have been engaged during the preceding calendar year in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding of the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions. The Secretary of Commerce will issue either a positive or negative certification to each nation that is identified in the biennial report to Congress. A positive certification would demonstrate that the nation has taken the necessary corrective action to address the fishing activities of concern described in the biennial report to Congress. Nations identified for having vessels engaged in shark catch on the high seas that do not receive a positive certification from the Secretary of Commerce may be subject to measures imposed by the Secretary of the Treasury under the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a). Such measures include the denial of port privileges of fishing vessels of those nations, and, as directed by the President, prohibition on the importation into the United States of certain fish and fish products caught by the vessels engaged in the relevant activity for which the nations were identified, or other measures.

To receive a positive certification, any nation that is identified as having fishing vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks will need to provide documentary evidence of the adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures. Prior to being issued a positive certification, such nation will also need to establish a management plan that assists in the collection of species-specific data in order to receive a positive certification.

Because the proposed regulations are purely procedural in nature, and only set out how NMFS is to make decisions regarding certifications for nations that have been identified in the biennial report to Congress, there are no direct economic impacts on small or large entities. Therefore, the proposed regulations will not have a significant economic impact on a substantial number of small entities and do not need to be analyzed under the Regulatory Flexibility Act. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements for §§ 300.206(b)(2), 300.207(c), and 300.208(c) subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The collection-of-information requirements have been provided to OMB.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: July 5, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: Moratorium Protection Act, 16 U.S.C. 1826d–1826k

2. Section 300.200 is revised to read as follows:

§ 300.200 Purpose and scope.

The purpose of this subpart is to implement the requirements in the High Seas Driftnet Fishing Moratorium Protection Act (''Moratorium Protection Act'') to identify and certify nations whose vessels engaged in illegal, unreported, or unregulated fishing; whose fishing activities result in bycatch of protected living marine resources; or whose vessels engaged in fishing activities or practices on the high seas that target or incidentally catch sharks where the nation has not adopted a regulatory program for the conservation of sharks, comparable in effectiveness to that of the United States, taking into account different conditions. This language applies to vessels entitled to fly the flag of the nation in question. Where the Secretary of Commerce determines that an identified nation has not taken the necessary actions to warrant receipt of a positive certification, the Secretary of Commerce may recommend to the President that the United States prohibit the importation of certain fish and fish products from the identified nation or other measures. The Secretary of Commerce will recommend to the President appropriate measures, including trade restrictive measures, to be taken against identified nations that have not received a positive certification, to address the fishing activities or practices for which such nations were identified in the biennial report. The Secretary of Commerce will make such a recommendation on a case-by-case basis in accordance with international obligations, including the WTO Agreement. The Moratorium Protection Act also authorizes cooperation and assistance to nations to take action to combat illegal, unreported, or unregulated fishing, reduce bycatch of protected living marine resources, and achieve shark conservation.

3. In § 300.201, the definition of ''Illegal, unreported, or unregulated (IUU) fishing'' is revised to read as follows:

§ 300.201 Definitions.

* * * * *

Illegal, unreported, or unregulated (IUU) fishing means:

(1) In the case of parties to an international fishery management agreement to which the United States is a party, fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including but not limited to catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures, or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; or,

(4) Fishing activity that has a significant adverse impact on seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

(5) Fishing activities by foreign flagged vessels in U.S. waters without authorization of the United States.

* * * * *

4. In § 300.202, paragraphs (a)(2) and (d)(1) are revised to read as follows:

§ 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.

(a) * * *

(2) When determining whether to identify a nation as having fishing vessels engaged in IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing activity in question, and any measures that the nation has implemented to address the IUU fishing activity. NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU activity in question takes place. If such an organization exists, NMFS will consider whether the relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing activity in question and, if the nation whose fishing vessels are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization. NMFS will also take into account any actions taken or on-going proceedings by the United States and/or flag State to address the IUU fishing activity of concern as well as the effectiveness of such actions.

* * * * *

(d) * * *

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report;

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report;

(iii) Whether the United States has taken enforcement action to effectively address the IUU fishing activity of the identified nation described in the biennial report; and

(iv) Whether the identified nation has cooperated in any action taken by the United States to address the IUU fishing activity described in the biennial report.

* * * * *

§ 300.203 [Amended]

5. In Section 300.203, paragraphs (a)(1), (a)(2), and (c)(1) are revised; paragraph (c)(2) is redesignated as paragraph (c)(3), and a new paragraph (c)(2) is added to read as follows:

(a) * * *

(1) NMFS will identify and list, in the biennial report to Congress nations—

(i) whose fishing vessels are engaged, or have been engaged during the preceding calendar year prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States;

(ii) if the nation is a party to or maintains cooperating status with the relevant international organization with jurisdiction over the conservation and protection of the relevant PLMRs, or a relevant international or regional fishery organization, and the organization has not adopted measures to effectively end or reduce bycatch of such species; and

(iii) the nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures.

(2) When determining whether to identify nations as having fishing vessels engaged in PLMR bycatch, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

* * * * *

(c) * * *

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for protected living marine resources that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species—specific data;

(2) Seek to enter into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

* * * * *

6. Section 300.204 is redesignated as § 300.205 and a new § 300.204 is added to read as follows:

§ 300.204 Identification and certification of nations whose vessels engaged in shark catch.

(a) *Procedures to identify nations if fishing vessels of that nation are engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks during the preceding calendar year.*—

(1) NMFS will identify and list in the biennial report to Congress nations—

(i) whose fishing vessels are engaged, or have been engaged during the calendar year prior to publication of the biennial report to Congress, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

(ii) where that nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable in effectiveness to that of the United States, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures.

(2) When determining whether to identify nations for these activities, NMFS will take into account all relevant matters including, but not limited to, the history, nature, circumstances, duration, and gravity of the fishing activity of concern.

(b) *Notification of nations identified as having fishing vessels engaged in fishing activities or practices that target or incidentally catch sharks.* Upon identifying in the biennial report to Congress a nation whose vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the Moratorium Protection Act and this subpart N.

(c) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties or other arrangements with such nations to protect sharks; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the conservation of sharks to make such agreements consistent with this subpart.

(d) *International Cooperation and Assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive certification under paragraph (e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and harvesting techniques aimed at mitigating or eliminating the non-target catch of sharks, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing, implementing, and enforcing appropriate fish harvesting plans for the conservation and sustainable management of sharks.

(e) *Procedures to certify nations identified as having fishing vessels engaged in fishing activities or practices that target or incidentally catch sharks.*—Each nation that is identified as having fishing vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and has not adopted a regulatory program for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discard the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions, shall receive either a positive or a negative certification from the Secretary of Commerce. This certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified

nation upon making a determination that:

(1) Such nation has provided evidence documenting its adoption of a regulatory program for the conservation of sharks that is comparable in effectiveness to regulatory measures required under U.S. law in the relevant fisheries, taking into account different conditions, including conditions that could bear on the feasibility and effectiveness of measures; and (ii) Such nation has established a management plan that will assist in the collection of species-specific data on sharks to support international stock assessments and conservation efforts for sharks.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations, and an opportunity to support and/or refute the preliminary determinations, and communicate actions taken to adopt a regulatory program that is comparable in effectiveness to that of the United States, taking into account different conditions. The Secretary of Commerce shall consider any relevant information received during consultations when making its formal certification determination.

* * * * *

7. Newly redesignated § 300.205 is revised to read as follows:

§ 300.205 Effect of certification.

(a) If a nation identified under § 300.202(a), § 300.203(a), or § 300.204(a) does not receive a positive certification under this subpart (i.e., the nation receives a negative certification or no certification is made), the fishing vessels of such nation are, to the extent consistent with international law, subject to the denial of entry by the Secretary of the Treasury into any place in the United States and to the navigable waters of the United States.

(b) Upon notification and any recommendations by the Secretary of Commerce to the President that an identified nation has failed to receive a positive certification, the President is authorized to direct the Secretary of the Treasury to prohibit the importation of certain fish and fish products from such nation (see § 300.206).

(c) Any action recommended under paragraph (b) shall be consistent with international obligations, including the WTO Agreement.

(d) If certain fish and fish products are prohibited from entering the United States, within six months after the imposition of the prohibition, the Secretary of Commerce shall determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing, bycatch, or shark catch described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity, bycatch, or shark catch or that a nation has taken retaliatory action against the United States. This certification is deemed to be a certification under section 1978(a) of Title 22, which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the offending country for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization.

(e) *Duration of certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken appropriate corrective action to address the IUU fishing activities for which it was identified in the biennial report. Any nation identified in the biennial report to Congress for having vessels engaged in PLMR bycatch or catch of sharks that is negatively certified will remain negatively certified until the Secretary of Commerce determines that the nation has taken the necessary actions pursuant to the Moratorium Protection Act to receive a positive certification.

(f) *Consultations.* NMFS will, working through or in consultation with the Department of State, continue consultations with nations that do not receive a positive certification with respect to the fishing activities described in the biennial report to Congress. The Secretary of Commerce shall take the results of such consultations into consideration when making a subsequent certification determination for each such nation.

8. Redesignate § 300.205 as § 300.206, and in newly redesignated § 300.206, revise paragraphs (a) and (b)(4) to read as follows:

§ 300.206 Denial of port privileges and import restrictions on fish or fish products.

(a) * * *

(1) Vessels from a nation identified in the biennial report under § 300.202(a), § 300.203(a), or § 300.204(a) and not positively certified by the Secretary of Commerce that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of force majeure or distress.

(2) For nations identified in the previous biennial report under § 300.202(a) that are not positively certified in the current biennial report, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing. For nations identified under § 300.203(a) or § 300.204(a) that are not positively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified.

(3) Any action recommended under paragraph (a)(2) shall be consistent with international obligations, including the WTO Agreement.

(b) * * *

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.206 shall no longer apply. The Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of the Treasury, will notify such nations and will file with the Office of the

Federal Register for publication notification of the removal of the import restrictions effective on the date of publication.

9. Redesignate § 300.206 as § 300.207, and in newly redesignated § 300.207, revise the section heading, and paragraph (c), and add paragraph (d) to read as follows:

§ 300.207 Alternative procedures for nations identified as having vessels engaged in IUU fishing activities that are not certified under § 300.202

* * * * *

(c) Fish and fish products offered for entry under this section must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and must be validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with international obligations, including the WTO Agreement.

10. Redesignate § 300.207 as § 300.208, and in newly redesignated § 300.208, revise the section heading and add paragraph (d) to read as follows:

§ 300.208 Alternative procedures for nations identified as having vessels engaged in bycatch of PLMRs that are not certified under § 300.203.

(d) Any action recommended under this section shall be consistent with international obligations, including the WTO Agreement.

11. Add new § 300.209 to read as follows:

§ 300.209 Alternative procedures for nations identified as having vessels engaged in shark catch that are not certified under § 300.204.

(a) These certification procedures may be applied to fish and fish products from a vessel of a harvesting nation that has been identified under § 300.204 in the event that the Secretary cannot reach a certification determination for that nation by the time of the next biennial report. These procedures shall not apply to fish and fish products from identified nations that have received either a negative or a positive certification under this subpart.

(b) Consistent with paragraph (a) of this section, the Secretary of Commerce may allow entry of fish and fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that imports were harvested by fishing activities or practices that do not target or incidentally catch sharks, or were harvested by practices that—

(1) Are comparable to those of the United States, taking into account different conditions; and

(2) Include the gathering of species specific shark data that can be used to support international and regional assessments and conservation efforts for sharks.

(c) Fish and fish products offered for entry under this section must be accompanied by a completed documentation of admissibility available from NMFS. The documentation of admissibility must be executed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The documentation must be executed and submitted in a format (electronic facsimile (fax), the Internet, etc.) specified by NMFS.

(d) Any action recommended under this section shall be consistent with international obligations, including the WTO Agreement.

[FR Doc. 2012–16838 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BB72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 34

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 34 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 34 proposes to modify the income qualification requirements for the renewal of Gulf of Mexico (Gulf) commercial reef fish permits and revise the crew size regulations for dual-permitted vessels (i.e. vessels that possess both a charter vessel/headboat permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish) while fishing commercially. The intent of Amendment 34 is to remove permit requirements that may no longer be applicable to current commercial fishing practices and to improve vessel safety in the Gulf reef fish fishery.

DATES: Written comments must be received on or before September 10, 2012.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2011–0025'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2011–0025'' in the search field and click on ''search''. After you locate the proposed rule, click the ''Submit a Comment'' link in that row. This will display the comment Web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the Web form. You can also attach additional files (up to 10 MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of Amendment 34, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Background

This amendment addresses several administrative issues relative to earned income requirements for commercial Gulf reef fish permit renewal and to the maximum crew size for dual-permitted vessels while fishing commercially. Due to recent changes in the Gulf reef fish commercial sector the income requirement and crew size limit regulations may no longer effectively serve their original purposes. The Council considered several alternatives for modifying the income requirement for permit renewal and the maximum crew size of dual-permitted vessels. These alternatives are summarized below.

Eliminating the Income Qualification Requirements for Commercial Gulf Reef Fish Permits

Under the current regulations, an applicant renewing a commercial vessel permit for Gulf reef fish must attest that greater than 50 percent of his/her earned income is derived from commercial fishing (i.e. harvest and first sale of fish) or charter fishing during either of the 2 calendar years preceding the application. Applicants must complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the EEZ (Federal Permit Application) as proof of meeting permit income qualification requirements for commercial Gulf reef fish vessel permits.

In addition, the requirement does not address regulatory changes such as the implementation of individual fishing quota (IFQ) programs for the red snapper and grouper/tilefish species which account for the majority of Gulf reef fish landings. Regardless of the proportion of a fisherman's income derived from commercial or charter fishing, participation in these IFQ fisheries is restricted to those who possess quota shares or who sell annual allocation. Eliminating the income requirement would afford more flexibility to fishermen to allow them to earn income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing.

In addition, this income requirement is relatively easy to meet or circumvent. However, the process of collecting tax return documentation is a large administrative burden that has been tried and failed in the past. Finally, the elimination of income requirements would also decrease the administrative burden to NMFS and the applicant by simplifying the permit renewal process.

The Council considered expanding the income sources used to determine the applicant's income earned from fishing to include income earned from the sale of IFQ shares and allocation. However, this alternative is not expected to affect the relative ease with which income qualification requirements can be circumvented. Another alternative would have replaced the income requirement with a landings requirement where an applicant would be required to prove that a predetermined amount of Gulf reef fish had been landed in the preceding year. The Council considered minimum annual landings thresholds ranging from 500 lb (227 kg) to 2,000 lb (907 kg) of Gulf reef fish. This alternative could increase the administrative burden and be difficult to monitor and enforce. A landings requirement may raise the potential of increased fishing effort to achieve the required threshold. Finally, the Council considered implementation of a protocol to temporarily suspend income requirements in response to events and conditions (such as oil spills or hurricanes) that affect fishing effort regionally or Gulf-wide. However, the election to eliminate the income requirements renders this option redundant.

Increasing the Maximum Crew Size for Dual-Permitted Vessels

Currently, 154 vessels possess a charter vessel/headboat permit and a commercial permit for Gulf reef fish, referred to as dual-permitted vessels. Unless the vessel has a certificate of inspection, dual-permitted vessels are limited to a three person maximum crew size as established under the final rule implementing Amendment 1 to the FMP (GMFMC 55 FR 2078, January 22, 1990). Historically, limiting the crew size on a dual-permitted vessel when fishing commercially may have served to prevent a vessel from taking out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. Under current commercial fishing practices, limiting the crew size of a vessel to prevent selling catch caught on a charter trip is no longer a primary concern. In addition to the implementation of the individual fishing quota programs, all commercial Gulf reef fish vessels are required to be equipped with vessel monitoring systems. The strict reporting requirements of these management measures make it clear when a vessel is operating as a commercial vessel.

Dual-permitted commercial spear fishermen requested an increase in crew size to allow two divers in the water, diving as a buddy pair, while two crew members remain aboard the vessel. This conforms to safe operating procedures for commercial diving and directly promotes the safety of human life at sea. The Council considered eliminating the crew size completely or increasing the maximum size from three to four persons. It is possible that eliminating the crew size requirement completely could lead to an increase in effort or other unintended consequences. Therefore, the Council selected the more prudent alternative, a controlled increase in crew size from three to four persons. Limiting the crew size increase to one additional crew member rather than eliminating the maximum crew size requirement completely minimizes any potential increase in efficiency and other unintended effects.

Proposed Rule for Amendment 34

A proposed rule that would implement Amendment 34 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 34 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 34 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 34 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on September 10, 2012, will be considered by NMFS in the approval/disapproval decision regarding Amendment 34.

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

Dated: July 5, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–16837 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 132

Tuesday, July 10, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0050]

Notice of Request for Approval of an Information Collection; Asian Longhorned Beetle Consumer Research Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: 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 (APHIS) intention to request an approval of an information collection associated with the APHIS Asian longhorned beetle eradication program.

DATES: We will consider all comments that we receive on or before September 10, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0050-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0050* or in our reading room, which 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) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Asian longhorned beetle consumer research survey, contact Ms. Heather Curlett, Outreach and Risk Communications Coordinator, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD 20737; (301) 851–2294. 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: Asian Longhorned Beetle Consumer Research Survey.

OMB Number: 0579–XXXX.

Type of Request: Approval of an information collection.

Abstract: The APHIS Asian longhorned beetle (ALB) Cooperative Eradication Program is responsible for protecting the United States' hardwood forests and parklands, as well as urban and suburban trees, from ALB infestation. The program works towards halting the spread of this devastating pest and preventing it from becoming established. Through survey, control, regulatory compliance measures, and public education, the ALB program protects trees on private property, in parks, and along streets. The program also protects tree-dependent industries such as timber, maple syrup, nurseries, and tourism.

One of the most common ways the ALB can spread is by human transport. Of particular concern is firewood cut from personal or neighborhood trees and moved to areas that are not currently infested with ALB or other invasive insects or plant diseases. The vigilance of residents in and around ALB regulated areas looking for the beetle and signs of infestation and reporting any suspicions, along with their adherence to rules regarding the movement of firewood, remain crucial. It is also important that citizens allow program officials access to private property for survey and treatment activities. Citizens in areas not currently ALB infested should also be cognizant of the beetle and why firewood movement should be curtailed.

The ALB Cooperative Eradication Program has been working to eradicate the ALB from the United States since 1996. Although steady progress has been made, areas remain vulnerable to ALB infestation as long as the beetle exists in the United States. Parts of Massachusetts, New Jersey, and New York are quarantined for ALB and the insect was recently detected in Ohio. People who live or work in or around ALB-affected and at-risk areas are critical to the United States Department of Agriculture's mission to stop the ALB. Alert community members have been the first to report every ALB infestation detected in the United States thus far. To stop the spread of this pest, the ALB Cooperative Eradication Program must retain the public's attention and would like to reach more people in different ways.

This information collection activity will help APHIS determine if current public communication initiatives that support the eradication program are effectively communicating necessary information about the pest, the eradication program, and the steps the public can take to help prevent the spread of ALB. APHIS will use this information to revise ALB-specific public communication efforts to better align with public information needs.

We are asking the Office of Management and Budget 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 0.25 hours per response.

Respondents: Consumers 18 years of age or older living in target counties in Massachusetts, New Jersey, New York, and Ohio.

Estimated annual number of respondents: 1,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 250 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 29th day of June 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–16798 Filed 7–9–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Forest Plan Provincial Advisory Committees

AGENCY: Forest Service, USDA.

ACTION: Notice of Administrative Meetings for the Northwest Forest Plan Provincial Advisory Committees.

SUMMARY: The Secretary of Agriculture has established the Pacific Northwest Provincial Advisory Committees (PACs) to the Provincial Interagency Executive Committees (PIECs) for 12 provinces, which are areas set up under the Northwest Forest Plan. The PIECs facilitate the successful implementation of the Record of Decision for Amendments to the Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl (ROD) of April 13, 1994. The purpose of the PACs is to advise the PIECs on coordinating the implementation of the ROD. Each PAC provides advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province. The PACs provide advice and recommendations to promote better integration of forest management activities between Federal and non-Federal entities to ensure that such activities are complementary.

The purpose of the administrative meetings will be to inform the current Provincial Advisory Committee membership of the following:

(1) Provincial Advisory Committees transitioning from subcommittees to full standing committees, under General Services Administration guidance.

(2) Inform the past PAC membership of Provincial Advisory Committee vacancies and nominations process.

DATES: Administrative Meetings for the Eastern Washington Cascades and Deschutes PACs will convene on the following dates:

Eastern Washington Cascades PAC: Monday, July 30, 2012, 2 p.m. to 3 p.m., Okanogan-Wenatchee National Forest Headquarters.

Addresses: 215 Melody Lane, Wenatchee, WA, 98801.

For Further Information Contact: Robin DeMario, 509–664–9292.

Yakima PAC: Tuesday, July 31, 2012, 2 p.m. to 3 p.m.

Addresses: Naches Ranger District, 10237 Highway 12, Naches, WA.

For Further Information Contact: Robin DeMario, 509–664–9292.

Deschutes PAC: Thursday, August 2, 2012, 5:30 p.m. to 7 p.m., Deschutes National Forest Headquarters

Addresses: 63095 Deschutes Market Rd., Bend, OR 97701.

For Further Information Contact: Mollie Chaudet, 541–383–5517.

Dated: July 3, 2012.

Nora B. Rasure,

Deputy Regional Forester.

[FR Doc. 2012–16773 Filed 7–9–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be

''collapsed'' (i.e., treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both de jure and de facto government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this Proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (e.g., an ongoing administrative review, new shipper review, etc.) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

the final results of these reviews not later than May 31, 2013.

	Period to be reviewed
Antidumping Duty Proceedings	
Belgium:	
Stainless Steel Plate in Coils, A–423–808	5/1/11–4/30/12
Aperam Stainless Belgium N.V. (ASB)	
Canada:	
Citric Acid and Certain Citrate Salt, A–122–853	5/1/11–4/30/12
Jungbunzlauer Canada Inc.	
France:	
Antifriction Bearings, Ball, A–427–801	5/1/11–9/14/11
Kongskilde Limited	
NTN–SNR Roulements, S.A.	
SKF France S.A. and SKF Aerospace France S.A.S.	
Germany:	
Antifriction Bearings, Ball, A–428–801	5/1/11–9/14/11
Audi AG	
Bayerische Motoren Werke AG	
Kongskilde Limited	
myonic GmbH	
Schaeffler Technologies GmbH & Co. KG (formerly known as Schaeffler KG)	
SKF GmbH	
Volkswagen AG	
Volkswagen Zubehor GmbH	
W&H Dentalwerk Burmoos GmbH	
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/11–9/14/11
SKF Industrie S.p.A. and Somecat S.p.A.	
Schaeffler Italia SpA	
Republic of Korea:	
Certain Polyester Staple Fiber, A–580–839	5/1/11–4/30/12
Huvis Corporation	
Saehan Industries, Inc.	
Woongjin Chemical Company, Ltd.	
Taiwan:	
Certain Circular Welded Carbon Steel Pipes and Tubes, A–583–008	5/1/11–4/30/12
Chung Hung Steel Corp.	
Kao Hsing Chang Iron & Steel Corp., also known as Kao Hsiung Chang Iron & Steel Corp.	
Shin Yang Steel Co., Ltd.	
Tension Steel Industries Co. Ltd.	
Polyester Staple Fiber, A–583–833	5/1/11–4/30/12
Far Eastern New Century Corporation (formerly known as Far Eastern Textiles Co., Ltd.)	
Nan Ya Plastics Corporation	
Thailand: Certain Frozen Warmwater Shrimp,[3] A–549–822	2/1/11–1/31/12
The People's Republic of China:	
Aluminum Extrusions,[4] A–570–967	11/12/10–4/30/12
Acro Import and Import Corp.	
Activa International Inc.	
Alnan Aluminium Co., Ltd.	
Changshu Changsheng Aluminum Products Co., Ltd.	
Changzhou Changfa Power Machinery Co., Ltd.	
Changzhou Changzheng Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd.	
Clear Sky Inc.	
Dongguan Aoda Aluminum Co., Ltd.	
Dongguan Golden Tiger Hardware Industrial Co., Ltd. No. 96	
Dynamic Technologies China Ltd.	
Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.	
Foshan Shunde Aoneng Electrical Appliances Co., Ltd.	
Foshan Yong Li Jian Alu. Ltd.	
Global PMX (Dongguan) Co., Ltd.	
Gold Mountain International Development, Limited	
Gree Electric Appliances, Inc. of Zhuhai	
Guang Dong Xin Wei Aluminum Products Co., Ltd.	
Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.	
Guangdong Whirlpool Electrical Appliances Co., Ltd.	
Guangya Aluminum Industrial Co., Ltd.	
Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.	
Hangzhou Xingyi Metal Products Co., Ltd.	
Hanyung Alcobis Co., Ltd.	
Henan New Kelong Electrical Appliances, Co., Ltd.	

	Period to be reviewed
IDEX Dinglee Technology (Tianjin) Co., Ltd.	
Isource Asia Limited and affiliates	
Jiangsu Changfa Refrigeration Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyuan Co., Ltd.	
Justhere Co., Ltd.	
Kromet International, Inc.	
Kunshan Giant Light Metal Technology Co., Ltd.	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air-Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Nidec Sankyo Singapore Pte. Ltd.	
Nidec Sankyo (Zhejang) Corporation	
Ningbo Coaster International Co., Ltd.	
North China Aluminum Co., Ltd. and affiliates	
Pingguo Asia Aluminum Co., Ltd.	
Shandong Huasheng Pesticide Machinery Co.	
Shanghai Dongsheng Metal	
Shanghai Shen Hang Imp. & Exp. Co., Ltd.	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.	
Shenzhen Hudson Technology Development Co., Ltd.	
Sihui Shi Guo Yao Aluminum Co., Ltd.	
Skyline Exhibit Systems (Shanghai) Co., Ltd. Skyline	
Sincere Profit Limited	
Suzhou JRP Import & Export Co., Ltd.	
Suzhou NewHongji Precision Part Co., Ltd.	
Taishan City Kam Kiu Aluminum Extrusion Co., Ltd.	
Taizhou Lifeng Manufacturing Corporation	
Tianjin Gangly Nonferrous Metal Materials Co., Ltd.	
Tianjin Jinmao Import & Export Corp., Ltd.	
Tiashan City Kam Kiu Aluminium Extrusion Co., Ltd.	
Union Industry (Asia) Co., Ltd. Xin Wei Aluminum Co., Ltd.	
Xin Wei Aluminum Company Limited	
Zhaoqing New Zhongya Aluminum Co., Ltd a.k.a. Guangdong Zhongya Aluminum Company Limited	
Zhejuang Zhengte Group Co., Ltd.	
Zhejiang Xinlong Industry Co., Ltd.	
Zhongshan Gold Mountain Aluminum Factory Ltd.	
Zhaoquing Asia Aluminum Factory	
Zhuhai Runxingtai Electrical Equipment Co., Ltd.	
Certain Activated Carbon,[5] A–570–904	4/1/11–3/31/12
Tancarb Activated Carbon Co., Ltd.	
Certain Oil Country Tubular Goods,[6] A–570–943	5/1/11–4/30/12
Angang Group New Steel Co., Ltd.	
Angang Steel Co. Ltd.	
Anhui Tianda Oil Pipe Co.	
Anshan Xin Yin Hong Petroleum and Gas Tubular Co.	
Anshan Zhongyou TIPO Pipe & Tubing Co., Ltd.	
Anton Tongao Technology Industry Co. Ltd.	
Anyang Iron & Steel Group Ltd.—Seamless	
Aofei Tele Dongying Import & Export Co., Ltd.	
Baoji Petroleum Steel Pipe (BSG)	
Baoji Sumitomo Metal Petroleum Steel Pipe	
Baolai Steel Pipe	
Baoshan Iron & Steel Co. Ltd.	
Baosteel Group Shanghai Steel Tube	
Baotou Found Petroleum Machinery Co. Ltd.	
Baotou Iron & Steel	
Bazhou Zhuofa Steel Pipe Co., Ltd.	
Beihai Steel Pipe Corporation	
Beijing Changxing Kaida Composite Material Development Co., Ltd.	
Beijing Shouhang Science-Technology Development Company	
Beijing Youlu Co., Ltd.	
Benxi Northern Steel Pipes Co., Ltd.	
Cangzhou City Baohai Petroleum Material Co., Ltd.	
Cangzhou OCTG Company Limited of Huabei Oilfield	
Changshu Seamless Steel Tube	
Changzhou Bao-Steel Tube	
Changzhou Darun Steel Tube Co., Ltd.	
Changzhou Hong Ping Material Supply Co., Ltd.	
Changzhou Huixiang Petroleum Machinery Co., Ltd.	
Changzhou Shengde Seamless Pipe Co., Ltd.	

	Period to be reviewed
Changzhou Steel Pipe Factory	
ChangZhou TaoBang Petroleum Tube Co., Ltd.	
Changzhou Tongchuang Tube Industry Co. Ltd.	
Changzhou Tong Xing Steel Tube Co.	
Changzhou Yuan Yang Steel Tube Co.	
Chengdu Wanghui Petroleum Pipe Co., Ltd.	
China Hebei Xinyuantai Steel Pipe Co.	
China Oilfield Services Limited	
Chongqing Petroleum Special Pipeline Factory of CNPC Sichuan Petroleum Goods & Material Supply Corp.	
CNOOC Kingland Pipeline Corp.	
Dagang Oilfield Group New Century Machinery Manufacturing Co., Ltd.	
Dalipal Pipe Company	
Daqing High-Tech Zone Hua Rui Ke Pipe Manufacturing Co.	
Daqing Petroleum Equipment Group	
Daye Xinye Special Steel Company Limited	
De Zhou Guang Hua Petroleum Machinery Company Limited	
De Zhou United Petroleum Machinery Company Limited	
Dingbian County Huayou Trading Company Limited	
Dongying City Meiyang Petroleum Pipe & Fittings Co., Ltd.	
Dongying Heli Petroleum Machinery Company Limited	
Etco (China) International Trading Co., Ltd.	
Faray Petroleum Steel Pipe Co., Ltd.	
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery, Zibo Branch	
The Freet Group	
Field Construction Bohai Equipment Services	
First Machinery Works of North China Petroleum	
General Machinery Plant of Shengli Petroleum Administration (Shengli Oil Field Shengli Petroleum Equipment Co., Ltd.)	
Grant Prideco	
Guanzheng Branch of Tangshan Jidong Petroleum Machinery Company, Ltd.	
Guangzhou Hongda Steel Tube	
Guangzhou Iron and Steel	
Guangzhou Juyi Steel Pipes Company Limited	
Haerbin City Weilian Mechanical Manufacturing Company Limited	
Haicheng Northern Steel Pipe Anti-Corrosion Company Limited	
Handan Precise Seamless Steel Pipes Co., Ltd.	
Hao Ying Qiqihaer in Northeast Special Steel Co., Ltd.	
Hebei ChangFeng Steel Tube Manufacture Group	
Hebei Litonglian Seamless Steel Pipe	
Hebei Puyang Iron and Steel Company Limited	
Hebei Xinlian Petroleum Machinery Company Limited	
Hebei Xinyuantai Steel Pipe Group Co., Ltd.	
Hebei Yi Xin Petroleum Pipe Company Limited	
Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd.	
Henan Nanyang Oilfield Machinery Manufacturing Company Limited	
Henan Zyzj Petroleum Equipment	
HengShui JingHua Steel Pipe Co.	
Heyi Steel Tube	
HG Tubulars Limited	
Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.	
HillHead	
HSC (Chengdu) Seamless Steel Pipe Co., Ltd.	
Hong Kong Gallant Group Ltd.	
Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.	
Hubei OCTG Machinery Co. (First)	
Huludao Steel Pipe Industrial Co., Ltd.	
Huludao City Steel Pipe Industrial Co.	
Hengyang Valin Steel Tube Co.	
Hengyang Valin MPM Tube Co., Ltd.	
Hengyang Steel Tube Group	
Jiangsu Benqiu Pipe Products Co	
Jiangsu Changbao Steel Tube Co., Ltd.	
Jiangsu Changbao Precision Tube Co., Ltd.	
Jiangsu Chengde Steel Tube Share Co., Ltd.	
Jiangsu Fanli Steel Pipe Co.	
Jiangsu Huacheng Industry Group Co.	
Jiangsu Huashun Steel Pipe Co.	
Jiangsu Li'Ao Steel Tube Company Limited	
Jiangsu Shined Petroleum Equipment Manufacturing Company Limited	
Jiangsu Sujia Group Co., Ltd.	
Jiangsu Wuxi Steel Group	
Jiangsu Yulong Steel Pipe Company Limited	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	

	Period to be reviewed
Jiangyin Chuangxin Oil Pipe	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
Jiangyin City Seamless Steel Tube Factory	
Jiangyin Hengyang Petroleum Machinery Company Limited	
Jiangyin Jieda Shaped Tube Company Limited	
Jiangyin Yashen Petroleum Pipe Company Limited	
Jiangyin Yuhao Petroleum Pipe Company Limited	
Jilin Baotong Petroleum Steel Pipe Company Limited	
Jinan Iron and Steel Company	
Jigang Group Co., Ltd.	
Jinxi Steel Pipe Co.	
Jiuquan Iron and Steel Group (JISCO)	
Laiwu Iron and Steel Corporation	
Langfang OTSMAN Special Petroleum Pipe Manufacture Company Limited	
Liangshan Steel Pipe Company Limited	
Liaocheng Jialong Tube Manufacture Company Limited	
Liaoning Large-scale Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co.	
Liaoning ShenYu Oil Pipe Manufacture Company Limited	
Lingyuan Iron & Steel Company Limited	
Linyi Sanyuan Steel Pipe Industry Company Limited	
Liuzhou Iron and Steel	
M&M Steel Pipe Co., Ltd.	
Machinery Factory of Jilin Petroleum Group Co., Ltd.	
Machinery Factory of Tuha Petroleum	
MCC Liaoning Dragon Pipe Industries Company Limited	
Nantong Hengte Tube Co., Ltd.	
Ning Xia D.M.S. OCTG Company Limited	
North China Petroleum Steel Pipe Co	
Pancheng Yihong Pipe Company Limited	
Pangang Group Beihai Steel Pipe Corporation	
Pangang Group Chengdu Iron & Steel Co., Ltd.	
Panyu ChuKong Steel Pipe Co.	
Pipe and Tooling Center, Sinopec Southwest Company	
Precision Pipe Manufacturing Branch of Liaoning Tianyi Industry Company	
Puyang City Shuangfa Industry	
Qiqihaer Haoying Iron & Steel Co of Northeast Special Steel Group	
Rizhao Steel Holding Group Co., Ltd.	
RiZhao ZhongShun Steel Pipe Manufacture Company Limited	
RongSheng Machinery Manufacture Limited of Huabei Oilfield	
Seamless Tube Mill of Baotou Steel Union	
Shaanxi Yangchang Petroleum Material Company	
Shandong Continental Petroleum Equipment Co., Ltd.	
Shandong Dongbao Steel Pipe Co., Ltd.	
Shandong Huabao Steel Pipe Co., Ltd.	
Shandong Luxing Steel Tube Co.	
Shandong Molong Petroleum Machinery Co., Ltd.	
Shandong Nine-Ring Petroleum Machinery Co., Ltd.	
Shandong Province Coalfield Geologic Drilling Tools Factory	
Shandong Shengdong Oilfield Machinery Co., Ltd.	
Shandong Shengli Tongxing Petroleum Pipe Manufacture Co., Ltd.	
Shandong Xinchi Steel Pipe Manufacture Co., Ltd	
Shandong Zhao Yu Petroleum Pipe Manufacture Co., Ltd.	
Shanghai Baochen Oil Pipeline Materials Company Limited	
Shanghai Baoshun Steel Tube Co., Ltd.	
Shanghai Baoyi Industrial Company	
Shanghai Kangxin Oil Pipe Manufacturing Co., Ltd.	
Shanghai Mingsheng Industrial Co., Ltd.	
Shanghai Yueyuechao Manufacture Tube Co.	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.	
Shanxi Hongli Steel Tube Share Company Limited	
Shanxi Guolian Pipe Industry Group Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe Co., Ltd.	
Shengli General Engineering (The Thermal Recovery Equipment Manufactory of Shengli General Engineering)	
Shengli Oil Field Freet Petroleum Equipment Co., Ltd.	
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	
Shengli Oil Field Highland Petroleum Equipment Co., Ltd.	
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	
Shengli Petroleum Administration General Machinery Plant	
Shenzhen Weisheng I.T.S. Petroleum Tubular & Equipment Co., Ltd.	
Sichuan ChengJiWeiYe Steel Pipe Co., Ltd	
Sichuan Huagong Petroleum Steel Pipe Co., Ltd.	
Steel Pipe Works of North China Petroleum	

	Period to be reviewed
Suzhou Friend Tubing and Casing Pipe Co., Ltd.	
Suzhou Seamless Steel Tube Works	
Taizhou Shuangyang Precision Seamless Steel Tube Co., Ltd.	
Tangshan Sanjin Mingsheng Industry Development Co., Ltd.	
Thermal Recovery Equipment Manufacturer of Shengli Oil Field	
Freet Petroleum Equipment Co., Ltd.	
Tianjin City Jinghai County Baolai Industrial and Trade Co.	
Tianjin City Juncheng Seamless Tube Company Limited	
Tianjin City Tian Yi Seamless Steel Tube Company Limited	
Tianjin Coupling Heat Treatment Company Limited	
Tianjin DeHua Petroleum Equipment Manufacturing Company Limited	
Tianjin Hua Xin Premium Connections Pipe Co, Ltd.	
Tianjin Huilitong Steel Tube Co., Ltd.	
Tianjin Jingtong Seamless Steel Pipe Co., Ltd.	
Tianjin Lida Steel Pipe Group Co., Ltd.	
Tianjin Lifengyuanda Steel Group Co., Ltd.	
Tianjin Liqiang Steel Pipe Co.	
Tianjin Pipe Group Corporation	
Tianjin Pipe Industry Developemnt Company	
Tianjin Ring-Top Petroleum Manufacture Co., Ltd.	
Tianjin Seamless Steel Pipe Plant	
Tianjin Shengcaiyuan Steel Trading Co., Ltd.	
Tianjin Shenzhoutong Steel Pipe Co. Ltd.	
Tianjin Shuangjie Pipe Manufacturing Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	
Tianjin Tianye Seamless Steel Pipe Plant Ltd.	
Tianjin Tubular Goods Machining	
Tianjin United Steel Pipe Co (UNISTEEL)	
Tianjin Xingyuda Steel Pipe Co., Ltd.	
Tianjin Zhongshun Industry Trade Co., Ltd.	
TianJin ZhongShun Petroleum Steel Pipe Co., Ltd.	
Tonghua Iron & Steel Group Panshi Seamless Steel Tube Company Limited	
Tuha Petroleum Machinery	
WSP Holdings Limited	
Wuhan Wugang Group Hanyang Steel Factory	
Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.	
Wuxi City DeRui Seamless Steel Pipe Co.	
Wuxi City DongQun Steel Tube Co.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe Co.	
Wuxi Erquan Special Steel	
Wuxi Fanyong Liquid Presses Tube Company Limited	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Fastube Industry Co.	
Wuxi Horizon Petroleum Special Pipe Manufacture Company Limited	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Huazin Petroleum Machine Company Limited	
Wuxi Precese Special Steel Co., Ltd.	
Wuxi Ruiyuan Special Steel Pipe Company Limited	
Wuxi Seamless Oil Pipe Co., Ltd.	
Wuxi SP, Steel Tube Manufacturing Co., Ltd.	
Wuxi Xijin Petroleum Equipment Fittings Manufacturing Co., Ltd.	
Wuxi Xingya Seamless Steel Tube Wuxi Zhen Dong Steel Pipe Works	
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.	
Xinjiang Petro Administration Bureau Machinery Manufacture General Company	
Xinjiang Ster Petroleum Tubes and Pipes Manufacturing Co., Ltd.	
Xigang Seamless Steel Tube Co., Ltd. XiNing Special Steel Co., Ltd	
Xuzhou Guanghuan Steel Tube Co. Ltd. Yancheng Steel Tube Works Co., Ltd.	
Yancheng Teda Special Pipe Co., Ltd. Yangzhou Chengde Steel Tube	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yantai KIYOFO Seamless Steel Pipe Company Limited	
Yantai Steel Pipe Co., Ltd. of Laiwu Iron & Steel Group	
Yantai Yuanhua Steel Tubes Company Limited	
ZhangJiaGang ZhongYuan Pipe-Making Co.	
Zhejiang Jianli Enterprise Co., Ltd.	
Zhejiang Gross Seamless Steel Tube Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
Zhongshi Special Steel Tubes Co., Ltd.	
Zibo Hongyang Petroleum Equipment Co., Ltd.	
Zibo Pipe Manufacturing	
Citric Acid and Citrate Salt,[7] A–570–937	5/1/11–4/30/12
RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd.	
Yixing Union Biochemical Co., Ltd.	
Pure Magnesium,[8] A–570–832	5/1/11–4/30/12

	Period to be reviewed
Tianjin Magnesiun International Co., Ltd.	
Tianjin Magnesium Metal Co., Ltd.	
Turkey:	
Circular Welded Carbon Steel Pipes and Tubes, A–489–501	5/1/11–4/30/12
Borusan Group and all affiliates	
Borusan Mannesmann Boni Sanayi ye Ticaret A.S.	
Borusan Istikbal Ticaret T.A.S.	
Borusan Holding A.S.	
Borusan Lojistik Dagitim Depolama Tasimacilik ye Tic A.S.	
ERBOSAN Erciyas Born Sanayi ye Ticaret A.S.	
Toscelik Profil ye Sac Endustrial A.S.	
Toscelik Metal Ticaret A.S.	
Tosyali Dis Ticaret A.S.	
Yucel Group and all affiliates	
Cayirova Boni Sanayi ye Ticaret A.S.	
Yucel Born ye Profil Endustrisi A.S.	
Yucelboru Ihracat Ithalat ye Pazarlama A.S.	
Countervailing Duty Proceedings	
The People's Republic of China:	
Aluminum Extrusions, C–570–968	9/7/10–12/31/11
Acro Import and Export Corp.	
Activa International Inc.	
Alnan Aluminium Co., Ltd.	
Changsha Hengjia Aluminum Co., Ltd.	
Changshu Changsheng Aluminum Products Co., Ltd. (''Changsheng'')	
Changzhou Changfa Power Machinery Co Ltd.	
Changzhou Changzheng Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd.	
Clear Sky Inc.	
Dongguan Aoda Aluminum Co., Ltd.	
Dongguan Golden Tiger Hardware Industrial Co., Ltd. No. 96 (''Golden Tiger'')	
Dynamic Technologies China Ltd.	
Foreign Trade Co. of Suzhou New & Hi-Tech Industrial Development Zone (''Suzhou New & Hi-Tech'')	
Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd. (''Hongjia'')	
Foshan Yong Li Jian Alu. Ltd.	
Global PMX (Dongguan) Co., Ltd. (''Global PMX'')	
Golden Dragon Precise Copper Tube Group Inc.	
Gree Electric Appliances, Inc. of Zhuhai	
Guandong Nanhai Foodstuffs Imp & Exp Co, Ltd. (''Nanhai'')	
Guangdong Foreign Trade Imp. & Exp. Corp.	
Guangdong Grand Shine Construction Material, Co., Ltd.	
Guangdong Whirlpool Electrical Appliances Co. Ltd. (''Guangdong Whirlpool'')	
Guangya Aluminum Industrial Co., Ltd. (''Guangya'')	
Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.	
Hangzhou Xingyi Metal Products Co., Ltd.	
Hanyung Alcobis Co., Ltd.	
Henan New Kelong Electrical Appliances, Co., Ltd.	
Huimeigao Aluminum Foshan Co., Ltd. (''Huimeigao'')	
IDEX Dinglee Technology (Tianjin) Co., Ltd. (''IDEX Dinglee'')	
Isource Asia Limited (''Isource'')	
Jiangsu Changfa Refrigeration Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyuan Co., Ltd.	
Justhere Co., Ltd.	
Kromet International Inc. (''Kromet'')	
Kunshan Giant Light Metal Technology Co., Ltd. (''Giant'')	
Mei Ya Bao Aluminum Co., Ltd. (''MYB'')	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air-Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Nidec Sankyo (Zhejang) Corporation	
Nidec Sankyo Singapore Pte. Ltd.	
Ningbo Coaster International Co., Ltd.	
North China Aluminum Co. Ltd.	
Pingguo Asia Aluminium Co., Ltd. (''Pingguo'')	
Shangdong Huasheng Pesticide Machinery Co.	
Shanghai Dongsheng Metal	
Shanghai Shen Hang Imp. & Exp. Co., Ltd	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co. Ltd. (''Tongtai'')	
Shanxi Guanly Changzhou Hongfeng Metal Processing Co., Ltd.	

	Period to be reviewed
Shenzhen Hudson Technology Development Co., Ltd. (Shenzhen Hudson)	
Shunde Aoneng Electrical Appliances Co., Ltd	
Sihui Shi Guo Yao Aluminum Co., Ltd. (“Guo Yao”)	
Sincere Profit Limited	
Skyline Exhibit Systems (Shanghai) Co., Ltd.	
Suzhou JRP Import & Export Co., Ltd. (“JRP”)	
Suzhou NewHongji Precision Part Co., Ltd. (“Suzhou NewHongji”)	
Taishan City Kam Kiu Aluminum Extrusion Co., LTD.	
Taizhou Lifeng Manufacturing Corporation	
Tianjin Gangly Nonferrous Metal Materials Co., Ltd. (“Tianjin Gangly”)	
Tianjin Jinmao Import & Export Corp., Ltd.	
Union Industry (Asia) Co., Ltd.	
Xin Wei Aluminum Company Limited, Guang Dong Xin Wei Aluminum Products Co., Ltd., and Xin Wei Aluminum Co., Ltd. (collectively “Xin Wei”)	
Zhaoqing Asia Aluminum Factory Company Limited (“ZAA”)	
Zhaoqing New Zhongya Aluminum Co., Ltd. (now operating as Guangdong Zhongya Aluminum Company Limited)	
Zhejiang Xinlong Industry Co., Ltd.	
Zhejiang Zhengte Group Co., Ltd. (“Zhengte”)	
Zhongshan Gold Mountain Aluminium Factory Ltd., Gold Mountain International Development, Limited (collectively, “Zhongshan Gold Mountain”)	
Zhuhai Runxingtai Electrical Equipment Co., Ltd. (“Zhuhai Runxingtai”)	
Citric Acid and Citrate Salts, C–570–938	1/1/11–12/31/11
RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd.	
Yixing Union Biochemical Co., Ltd.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ‘‘gap’’ period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491 (February 10, 2011) (‘‘Interim Final Rule’’), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the

[3] On April 2, 2012, the Department published a notice of initiation of administrative reviews for the orders covering certain frozen warmwater shrimp (shrimp) from Brazil, India, and Thailand. See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation of Order in Part, 77 FR 19612 (April 2, 2012). This notice should have also indicated that the Department received a timely request to revoke, in part, the antidumping duty order on shrimp from Thailand with respect to one exporter.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Aluminum Extrusions from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] This company was inadvertently omitted from the initiation notice that published on May 29, 2012 (77 FR 31568).

[6] If the above-named company does not qualify for a separate rate, all other exporters of Certain Oil Country Tubular Goods from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If the above-named company does not qualify for a separate rate, all other exporters of Citric Acid and Citrate Salt from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If the above-named company does not qualify for a separate rate, all other exporters of Pure Magnesium from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: June 21, 2012.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–16154 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 5, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. The period of review (POR) is February 1, 2010, through January 31, 2011.

Based on our analysis of the comments received we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6345 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 156 producers/exporters. The respondents which the Department selected for individual examination are Pakfood Public Company Limited and its affiliated subsidiaries (collectively, ''Pakfood'') [1] and Thai Royal Frozen Food Co., Ltd. (TRF). The respondents which were not selected for individual examination are listed in the ''Final Results of Review'' section of this notice.

On March 5, 2012, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from Thailand.[2]

In April 2012, the Department verified the sales and cost data reported by TRF, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). In May 2012, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner), the American Shrimp Processors Association (the processors), Marine Gold Products Ltd. (MRG) (a Thai exporter/manufacturer which filed a voluntary response),[3] Pakfood, and TRF (collectively, ''the respondents'').

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[4] 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 this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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 shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Thai white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS 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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); and (7) 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 ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to 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 this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather

[1] These subsidiaries are: Asia Pacific (Thailand) Company Ltd., Chaophraya Cold Storage Co., Ltd., Okeanos Co., Ltd., Okeanos Food Co., Ltd., and Takzin Samut Co., Ltd.

[2] *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination,* 77 FR 13082 (Mar. 5, 2012) (*Preliminary Results*).

[3] Because we found that it would be unduly burdensome and would inhibit the timely completion of the review to analyze voluntary responses in this review, we have treated MRG as a non-examined exporter. For further discussion, see *Preliminary Results,* 77 FR at 13084–5, and the July 3, 2012, ''Issues and Decision Memorandum,'' which accompanies this notice, at Comment 2.

[4] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2010, through January 31, 2011.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from 14 companies named in the *Initiation Notice,*[5] five of which (*i.e.,* Calsonic Kansei (Thailand) Co., Ltd., Daedong (Thailand) Co., Ltd., Gulf Coast Crab International Co., Ltd., Preserved Food Specialty Co., Ltd., and Tep Kinsho Foods, Ltd.) contained procedural deficiencies. *See Preliminary Results,* 77 FR at 13085. Because these companies did not remedy the deficiencies prior to these final results, we have continued to assign them final dumping margins based on the average of the rates calculated for the mandatory respondents.

Regarding the remaining nine companies, we confirmed the claims of these companies with U.S. Customs and Border Protection (CBP). Therefore, because we find that the record indicates that the nine companies listed below did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR. These companies are:

(1) Anglo-Siam Seafoods Co., Ltd.
(2) F.A.I.T. Corporation Limited
(3) Grobest Frozen Foods Co., Ltd.
(4) Lucky Union Foods Co., Ltd.
(5) Namprik Maesri Ltd., Part.
(6) S&P Syndicate Public Co., Ltd.
(7) Siamchai International Food Co., Ltd.
(8) Thai Union Manufacturing Co., Ltd.
(9) V. Thai Food Product Co., Ltd.

See Preliminary Results, 77 FR at 13085.

As we stated in the *Preliminary Results,* our former practice concerning respondents submitting timely no-shipment certifications was to rescind the administrative review with respect to those companies if we were able to confirm the no-shipment certifications through a no-shipment inquiry with CBP. *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27393 (May 19, 1997); *see also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010). As a result, in such circumstances, we normally instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, clarification of the ''automatic assessment'' regulation, 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) (*Assessment Policy Notice*).

As noted in the *Preliminary Results,* 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 the above listed companies and exported by other parties at the all-others rate. In addition, we continue to find that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the nine companies listed above and issue appropriate instructions to CBP based on the final results of this administrative review. *See* the ''Assessment Rates'' section of this notice below.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Pakfood and TRF made home market sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results,* 77 FR at 13088. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results. Id.* at 13088.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1)–(2) of the Act.

Therefore, for purposes of these final results, we continue to find that Pakfood and TRF made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act. Additionally, for those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we continued to compare export prices to constructed value in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this administrative review are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file electronically via IA ACCESS in the Central Records Unit, room 7046, of the main Department of Commerce building.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Issues and Decision Memorandum.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2010, through January 31, 2011:

Manufacturer/exporter	Percent margin
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co. Ltd./Okeanos Food Co. Ltd./Takzin Samut Co., Ltd	0.97

[5] *See Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 76 FR 18157 (Apr. 1, 2011) (*Initiation Notice*).

Manufacturer/exporter	Percent margin
Thai Royal Frozen Food Co., Ltd	1.78
Review-Specific Average Rate Applicable to the Following Companies: [6]	
A Foods 1991 Co., Ltd./May Ao Co., Ltd./May Ao Foods Co., Ltd	1.38
A. Wattanachai Frozen Products Co., Ltd.[7]	1.38
A.S. Intermarine Foods Co., Ltd	1.38
ACU Transport Co., Ltd	1.38
Anglo-Siam Seafoods Co., Ltd	(*)
Apex Maritime (Thailand) Co., Ltd	1.38
Apitoon Enterprise Industry Co., Ltd	1.38
Applied DB	1.38
Asian Seafood Coldstorage (Sriracha)	1.38
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	1.38
Assoc. Commercial Systems	1.38
B.S.A. Food Products Co., Ltd	1.38
Bangkok Dehydrated Marine Product Co., Ltd	1.38
C Y Frozen Food Co., Ltd	1.38
C.P. Merchandising Co., Ltd	1.38
Calsonic Kansei (Thailand) Co., Ltd	1.38
Century Industries Co., Ltd	1.38
Chaivaree Marine Products Co., Ltd	1.38
Chaiwarut Company Limited	1.38
Charoen Pokphand Foods Public Co., Ltd	1.38
Chonburi LC	1.38
Chue Eie Mong Eak	1.38
Core Seafood Processing Co., Ltd	1.38
CP Retailing and Marketing Co., Ltd	1.38
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood	1.38
Daedong (Thailand) Co. Ltd	1.38
Daiei Taigen (Thailand) Co., Ltd	1.38
Daiho (Thailand) Co., Ltd	1.38
Dynamic Intertransport Co., Ltd	1.38
Earth Food Manufacturing Co., Ltd	1.38
F.A.I.T. Corporation Limited	(*)
Far East Cold Storage Co., Ltd	1.38
Findus (Thailand) Ltd	1.38
Fortune Frozen Foods (Thailand) Co., Ltd	1.38
Frozen Marine Products Co., Ltd	1.38
Gallant Ocean (Thailand) Co., Ltd	1.38
Gallant Seafoods Corporation	1.38
Global Maharaja Co., Ltd	1.38
Golden Sea Frozen Foods Co., Ltd.[8]	1.38
Good Fortune Cold Storage Co., Ltd	1.38
Good Luck Product Co., Ltd	1.38
Grobest Frozen Foods Co., Ltd	(*)
GSE Lining Technology Co., Ltd	1.38
Gulf Coast Crab Intl	1.38
H.A.M. International Co., Ltd	1.38
Haitai Seafood Co., Ltd	1.38
Handy International (Thailand) Co., Ltd	1.38
Heng Seafood Limited Partnership	1.38
Heritrade	1.38
HIC (Thailand) Co., Ltd	1.38
High Way International Co., Ltd	1.38
I.T. Foods Industries Co., Ltd	1.38
Inter-Oceanic Resources Co., Ltd	1.38
Inter-Pacific Marine Products Co., Ltd	1.38
K & U Enterprise Co., Ltd	1.38
K Fresh	1.38
K.D. Trading Co., Ltd	1.38
K.L. Cold Storage Co., Ltd	1.38
KF Foods	1.38
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	1.38
Kibun Trdg	1.38
Kingfisher Holdings Ltd	1.38
Kitchens of the Oceans (Thailand) Ltd.[9]	1.38
Klang Co., Ltd	1.38
Kongphop Frozen Foods Co., Ltd	1.38
Kosamut Frozen Foods Co., Ltd	1.38
Lee Heng Seafood Co., Ltd	1.38
Leo Transports	1.38
Li-Thai Frozen Foods Co., Ltd	1.38
Lucky Union Foods Co., Ltd	(*)
Maersk Line	1.38
Magnate & Syndicate Co., Ltd	1.38

Manufacturer/exporter	Percent margin
Mahachai Food Processing Co., Ltd	1.38
Marine Gold Products Co., Ltd	1.38
Merit Asia Foodstuff Co., Ltd	1.38
Merkur Co., Ltd	1.38
Ming Chao Ind Thailand	1.38
N&N Foods Co., Ltd	1.38
Namprik Maesri Ltd. Part	(*)
Narong Seafood Co., Ltd	1.38
Nongmon SMJ Products	1.38
NR Instant Produce Co., Ltd	1.38
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd	1.38
Pacific Queen Co., Ltd	1.38
Penta Impex Co., Ltd	1.38
Pinwood Nineteen Ninety Nine	1.38
Piti Seafoods Co., Ltd	1.38
Premier Frozen Products Co., Ltd	1.38
Preserved Food Specialty Co., Ltd	1.38
Queen Marine Food Co., Ltd	1.38
Rayong Coldstorage (1987) Co., Ltd	1.38
S&D Marine Products Co., Ltd	1.38
S&P Aquarium	1.38
S&P Syndicate Public Company Ltd	(*)
S. Chaivaree Cold Storage Co., Ltd	1.38
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind Public	1.38
Samui Foods Company Limited	1.38
SCT Co., Ltd	1.38
Sea Bonanza Food Co., Ltd	1.38
SEA NT'L CO., LTD	1.38
Seafoods Enterprise Co., Ltd	1.38
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	1.38
Search & Serve	1.38
Shianlin Bangkok Co., Ltd	1.38
Shing Fu Seaproducts Development Co	1.38
Siam Food Supply Co., Ltd	1.38
Siam Intersea Co., Ltd	1.38
Siam Marine Products Co. Ltd	1.38
Siam Ocean Frozen Foods Co. Ltd	1.38
Siamchai International Food Co., Ltd	(*)
Smile Heart Foods Co. Ltd	1.38
SMP Products, Co., Ltd.[10]	1.38
Southport Seafood Co., Ltd	1.38
Star Frozen Foods Co., Ltd	1.38
Starfoods Industries Co., Ltd	1.38
Suntechthai Intertrading Co., Ltd	1.38
Surapon Nichirei Foods Co., Ltd	1.38
Surapon Foods Public Co., Ltd.[11]/Surat Seafoods Co., Ltd	1.38
Suratthani Marine Products Co., Ltd	1.38
Suree Interfoods Co., Ltd	1.38
T.S.F. Seafood Co., Ltd	1.38
Tanaya International Co., Ltd	1.38
Tanaya Intl	1.38
Tep Kinsho Foods Co., Ltd	1.38
Teppitak Seafood Co., Ltd	1.38
Tey Seng Cold Storage Co., Ltd	1.38
Thai Agri Foods Public Co., Ltd	1.38
Thai Mahachai Seafood Products Co., Ltd	1.38
Thai Ocean Venture Co., Ltd	1.38
Thai Patana Frozen	1.38
Thai Prawn Culture Center Co., Ltd	1.38
Thai Spring Fish Co., Ltd	1.38
Thai Union Frozen Products Public Company Ltd./Thai Union Seafood Co., Ltd	1.38
Thai Union Manufacturing Company Limited	(*)
Thai World Import & Export Co., Ltd.[12]	1.38
Thai Yoo Ltd., Part	1.38
The Siam Union Frozen Foods Co., Ltd.[13]	1.38
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd	1.38
Trang Seafood Products Public Co., Ltd	1.38
Transamut Food Co., Ltd	1.38
Tung Lieng Trdg	1.38
United Cold Storage Co., Ltd	1.38
V Thai Food Product	(*)
Xian-Ning Seafood Co., Ltd	1.38
Yeenin Frozen Foods Co., Ltd	1.38
YHS Singapore Pte	1.38

Manufacturer/exporter	Percent margin
ZAFCO TRDG	1.38

* No shipments or sales subject to this review.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Pakfood and TRF reported the entered value for certain of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the entered value.

For the remainder of Pakfood's and TRF's U.S. sales, we note that these companies did not report the entered value for the U.S. sales in question. Therefore, we have calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to Pakfood's and TRF's U.S. sales of shrimp with sauce for which no entered value was reported, we have included the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual review, we have assigned these companies an assessment rate based on the simple average of the margins calculated for those companies selected for individual review. In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we use a simple average when it yields the best proxy of the weighted-average margin as a matter of practice. *See Bearings from France,* 75 FR at 53663.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the *Section 129 Determination* [14] if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the ''Determination of No Shipments'' section, above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the *Section 129 Determination.* These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[6] This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

[7] This company notified us that A. Wattanachai Frozen Products, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is A. Wattanachai Frozen Products Co., Ltd.

[8] This company notified us that Golden Sea Frozen Foods, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is Golden Sea Frozen Foods Co., Ltd.

[9] This company notified us that Kitchens of the Ocean (Thailand) Ltd., on which we also initiated an administrative review, is a variation of its company name. The company's legal name is Kitchens of the Oceans (Thailand) Ltd.

[10] This company notified us that SMP Foods Products Co., Ltd., and SMP Food Products Co., Ltd., on which we initiated an administrative review, are variations of its company name. The company's legal name is SMP Products, Co., Ltd.

[11] This company notified us that Surapon Seafood and Surapon Seafoods Public Co., Ltd, on which we initiated an administrative review, are variations of its company name. The company's legal name is Surapon Foods Public Co., Ltd.

[12] This company notified us that Thai World Imp. & Exp. Co. and Thai World Imports & Exports, on which we initiated an administrative review, are variations of its company name. The company's legal name is Thai World Import & Export Co., Ltd.

[13] This company notified us that Siam Union Frozen Foods, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is The Siam Union Frozen Foods Co., Ltd.

[14] *See Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (Jan. 30, 2009) (*Section 129 Determination*).

Notification to Interested Parties

This notice serves as the only 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/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 of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 3, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues

1. Offsets for Negative Margins
2. Voluntary Respondents
3. Treatment of Assessed Antidumping Duties
4. Treatment of Sauce in the Calculation of Gross Unit Price

Company-Specific Comments

5. Clerical Errors in the Preliminary Results for TRF
6. TRF's Home Market Credit Expenses
7. TRF's Sales to a Certain U.S. Customer

[FR Doc. 2012–16833 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2010–2011 Antidumping Duty Administrative Review, Rescission In Part, and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''Department'') is currently conducting the 2010–2011 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (''TRBs''), from the People's Republic of China (''PRC''), covering the period June 1, 2010, through May 31, 2011. We have preliminarily determined that sales have been made below normal value (''NV'') by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer-specific assessment rates are above *de minimis.*

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Erin Kearney, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–0167, respectively.

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] On June 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC.[2] On June 30, 2011, we received the following requests for review: (1) The Timken Company, of Canton, Ohio (''Petitioner'') requested that the Department conduct administrative reviews of Changshan Peer Bearing Company (''CPZ/SKF''), Zhejiang Zhaofeng Mechanical Co., (''Zhejiang Zhaofeng''), and Haining Automann Parts Co., Ltd. (''Haining Automann''); (2) CPZ/SKF and its affiliate Peer Bearing Company (''Peer/SKF'') requested that the Department conduct an administrative review of CPZ/SKF; (3) Xiang Yang Automobile Bearing Co., Ltd. (''ZXY'') self-requested that the Department conduct an administrative review; (4) Zhejiang Sihe Machine Co., Ltd. (''Sihe'') self-requested that the Department conduct an administrative review; (5) Xinchang Kaiyuan Automotive Bearing Co., Ltd. (''Kaiyuan'') self-requested that the Department conduct an administrative review; (6) Bosda International USA LLC (''Bosda''), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of Tianshui Hailin Import and Export Corporation (''Tianshui Hailin''); (7) Northfield Industries LLC (''Northfield''), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of Tianshui Hailin; (8) Fremont International Trading, Inc. (''FIT''), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of Tianshui Hailin; and (9) GMB North America Inc. (''GMB''), a U.S. importer of subject merchandise, requested that the Department conduct an administrative review of Zhejiang Zhaofeng.

On July 28, 2011, the Department initiated the administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2010, through May 31, 2011.[3] On October 4, 2011, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (''the Act''). The Department selected the largest exporter by volume as its mandatory respondent for this review, that is, CPZ/SKF.[4] On October 4, 2011, the Department issued its antidumping duty questionnaire to CPZ/SKF. Between November 21, 2011, and May 17, 2012, CPZ/SKF timely responded to the Department's original and supplemental questionnaires.

On March 5, 2012, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by the full 120 days allowed under section 751(a)(3)(A) of the Act, to June 29, 2012.[5] From April 16, 2012, through April 20, 2012, the Department conducted a sales and factors of production (''FOP'') verification of CPZ/SKF, and from April 23, 2012, through April 25, 2012, conducted a sales

[1] *See Notice of Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 31586 (June 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011) (''*Initiation Notice*'').

[4] *See* the Department's Memorandum entitled, ''Respondent Selection in the 2010–2011 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China,'' dated October 4, 2011.

[5] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 13082 (March 5, 2012).

verification of Peer/SKF.[6] On May 15, 2012, Petitioner submitted pre-preliminary comments, and on May 29, 2012, CPZ/SKF submitted rebuttal comments.[7]

Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the review, or withdraws at a later date if the Department exercises its discretion to extend the time limit for withdrawing the request. In this case, Kaiyuan and Sihe timely withdrew their requests for review, and no other party requested a review of either company.[8] Finally, Zhejiang Zhaofeng withdrew from participation in this review, but GMB also requested a review of Zhejiang Zhaofeng, which was not withdrawn.[9] Therefore, we are rescinding the administrative review of TRBs on Kaiyuan and Sihe, but not Zhejiang Zhaofeng.

Intent To Rescind the Review in Part

Bosda, FIT, and Northfield timely requested an administrative review for Tianshui Hailin, a company which does not have a separate rate, and then timely withdrew their requests for review of Tianshui Hailin.[10] Because this company has not established its eligibility for a separate rate, it will continue to be considered part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding this review with respect to this company at this time, but we intend to rescind this review with respect to Tianshui Hailin in the final results if the PRC-wide entity is not reviewed.

Period of Review

The POR is June 1, 2010, through May 31, 2011.

Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15[11] and 8708.99.80.80.[12] Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Non-Market Economy Country Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy (''NME'') country shall remain in effect until revoked by the administering authority. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market-economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below.[13]

The Department uses per capita Gross National Income (''GNI'') as the primary basis for determining economic comparability.[14] Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether data for valuing FOPs are both available and reliable.

On September 28, 2011, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine.[15] On November 14, 2011,

[6] *See* Memorandum to the File from Erin Kearney and Brandon Farlander, Case Analysts entitled, ''Verification of the Sales and Factors Responses of Changshan Peer Bearing Co., Ltd. in the 24th Administrative Review of Tapered Roller Bearings and Parts Thereof (Finished and Unfinished) (''TRBs'') from the People's Republic of China,'' dated May 31, 2012; and Memorandum to the File from Erin Kearney and Brandon Farlander, Case Analysts entitled, ''Verification of the Questionnaire Responses of Changshan Peer Bearing Company, Ltd.'s (''CPZ/SKF'') U.S. affiliate Peer Bearing Company/SKF (''Peer/SKF'')'', dated May 31, 2012.

[7] *See* Petitioner's May 15, 2012, letter entitled, ''Administrative Review of the Antidumping Duty Order Covering Tapered Roller Bearings (''TRBs'') and Parts Thereof, Finished or Unfinished, From The People's Republic of China (''PRC'') (6/1/2010-5/31/2011); The Tirnken Company's Pre-Preliminary Comments'' (''Petitioner's Pre-Preliminary Comments''); *see also* CPZ/SKF's May 29, 2012, letter entitled, ''Tapered Roller Bearings and Parts Thereof from The People's Republic of China: SKF's Rebuttal to Timken's Pre-Preliminary Comments'' (''CPZ/SKF's Rebuttal'').

[8] *See* Kaiyuan's letter entitled, ''Tapered Roller Bearings from China: Withdrawal of Request for Administrative Review,'' dated September 23, 2011; *see also* Sihe's letter entitled, ''Tapered Roller Bearings from China: Withdrawal of Request for Administrative Review,'' dated September 23, 2011.

[9] *See* Zhejiang Zhaofeng's letter entitled, ''Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Withdrawal of Participation in Administrative Review, dated December 5, 2011 (''Zhejiang Zhaofeng Withdrawal'').

[10] *See* Bosda's letter entitled, ''Tapered Roller Bearings from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated August 22, 2011; FIT's letter entitled, ''Tapered Roller Bearings from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated September 16, 2011, and Northfield's letter entitled, ''Tapered Roller Bearings from the People's Republic of China: Withdrawal of Request for Administrative Review by Northfield Industries LLC,'' dated September 21, 2011.

[11] Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* United States International Trade Commission (''USITC'') publication entitled, ''Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,'' USITC Publication 3898 (December 2006) found at *www.usitc.gov.*

[12] Effective January 1, 2007, the USHTS subheading 8708.99.8080 is renumbered as 8708.99.8180; *see id.*

[13] *See also* the Department's memorandum entitled, ''Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Surrogate Value Memorandum,'' dated concurrently with this notice (''Surrogate Value Memorandum'').

[14] *See* the Department's Policy Bulletin No. 04.1, regarding, ''Non-Market Economy Surrogate Country Selection Process,'' (March 1, 2004) (''*Policy Bulletin 04.1*''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull04-1.html.*

[15] *See* Attachment I of the Department's letter dated November 14, 2011, in which we requested all interested parties to provide comments on surrogate-country selection and provide FOP values from the potential surrogate countries (*i.e.,* Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine) (''Surrogate Countries Letter''). Attachment I contains the Department's Memorandum from Carole Showers, Director, Office of Policy, to Howard Smith, Program Manager, AD/CVD Operations, Office 4, entitled, ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (''TRBs'') from the People's Republic of China (''China''),'' dated September 28, 2011

the Department invited all interested parties to submit comments on the surrogate country selection.[16] On December 15, 2011, Petitioner and CPZ/SKF submitted comments regarding the Department's selection of a surrogate country for the preliminary results.[17]

With respect to the Department's selection of surrogate country, both Petitioner and CPZ/SKF argue that Thailand is the most appropriate surrogate country from which to derive surrogate factor values for the PRC. Petitioner and CPZ/SKF note that Thailand is economically comparable to the PRC, as it appears as a potential surrogate country in the Department's Surrogate Countries Memorandum.[18] Petitioner submitted United Nations Commodity Trade Statistics Database (''UN COMTRADE'') export data for 2008, 2009, and 2010, which it argues shows that Thailand is a significant producer of comparable merchandise and that Thailand has exported more comparable merchandise than the other potential surrogate countries.[19] CPZ/SKF argued that the Department found Thailand to be a significant producer of comparable merchandise in *TRBs 2007–2008.*[20] CPZ/SKF also submitted World Trade Atlas data for the POR, as well as UN COMTRADE data, which CPZ/SKF argues show that Thailand is a significant producer of comparable merchandise.[21] Finally, Petitioner and CPZ/SKF argue that the Thai data they submitted in their surrogate value submissions constitute reliable information from Thailand on the record that can be used to value respondents' FOPs.[22]

Therefore, the Department is preliminarily selecting Thailand as the surrogate country on the basis that: (1) It is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the FOPs. Accordingly, we have calculated NV using Thai prices when available and appropriate to value the respondent's FOPs.[23] In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.[24]

Separate Rates

In antidumping proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that the export activities of all companies within the 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 merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

CPZ/SKF submitted information indicating that CPZ/SKF is a wholly foreign-owned limited liability company. Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis for CPZ/SKF. ZXY has submitted information indicating that it is a joint-stock limited PRC company that has no foreign ownership. Thus, the Department must analyze whether ZXY has demonstrated the absence of both *de jure* and *de facto* government control over export activities, and is therefore entitled to a separate rate. Zhejiang Zhaofeng and Haining Automann did not submit information to determine if they are eligible for separate rates. Also, Zhejiang Zhaofeng withdrew from participating in this proceeding.[25] Hence, Zhejiang Zhaofeng and Haining Automann will remain part of the PRC-entity.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[26]

The evidence provided by ZXY supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the company and (3) the existence of formal measures by the government decentralizing control of the company.[27]

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether a company is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the company has authority to negotiate and sign contracts and other agreements; (3) whether the company has autonomy from the government in making decisions regarding the selection of management; and (4) whether the

(''Surrogate Countries Memorandum''); *see also Policy Bulletin 04.1.*

[16] *See* Surrogate Countries Letter.

[17] *See* Petitioner's submission entitled, ''The Timkin Company's Surrogate Country Comments,'' dated December 15, 2011 (''Petitioner's SC Submission''); *see also* CPZ/SKF's submission entitled ''SKF's Surrogate Country and Surrogate Value Comments,'' dated December 15, 2011 (''CPZ/SKF's SC/SV Submission'').

[18] *See id.*

[19] *See* Petitioner's SC Submission.

[20] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2007–2008 Administrative Review of the Antidumping Duty Order,* 75 FR 844 (January 6, 2010) (''*TRBs 2007–2008*'').

[21] *See* CPZ/SKF's SC/SV Submission at Appendices S–2 and S–3.

[22] *See* Petitioner's SC Submission and CPZ/SKF's SC/SV Submission; *see also* Petitioner's submission entitled ''The Timkin Company's Pre-Preliminary Surrogate Value Comments, dated December 15, 2011 (''Petitioner's SV Submission'').

[23] *See* Surrogate Value Memorandum; *see also* ''Factor Valuations'' section, below.

[24] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying IDM at Comment 2.

[25] *See* Zhejiang Zhaofeng Withdrawal.

[26] *See Sparklers,* 56 FR at 20589.

[27] *See* ZXY's Separate Rate Application (''SRA''), dated September 26, 2011.

company retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[28]

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For ZXY, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) ZXY sets its own export prices independent of the government and without the approval of a government authority; (2) it retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) it has the authority to negotiate and sign contracts and other agreements; and (4) it has autonomy from the government regarding the selection of management.[29]

The evidence placed on the record of this review by ZXY demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting ZXY a separate rate.

Margin for Separate Rate Companies

The Act and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporter subject to a review that was determined to be eligible for separate rate status, but was not selected as a mandatory respondent, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available.

As discussed above, the Department received a timely and complete separate rate application from ZXY, an exporter of TRBs from the PRC during the POR, and ZXY was not selected as a mandatory respondent in this review. ZXY has demonstrated its eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for ZXY based on the rate we calculated for the individually examined respondent, CPZ/SKF.

Fair Value Comparisons

In accordance with 19 CFR 351.414(c)(1) and (d) of the Department's regulations, to determine whether sales of TRBs to the United States by CPZ/SKF were made at less than fair value, we compared constructed export price (''CEP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below.[30]

In Petitioner's Pre-Preliminary Comments, Petitioner states that, according to *Final Modification for Reviews,* the Department intends to compare average export prices and average normal values and will grant offsets in administrative reviews, but that there may be cases in which an alternate methodology is warranted.[31] Petitioner requests that, in this case, based on evidence on the record, the Department conduct a targeted dumping analysis and employ average-to-transaction comparisons without offsets, should the Department find that the record supports it.[32] In CPZ/SKF's rebuttal, it argues that the Department does not have the statutory authority to apply a targeted dumping analysis in an administrative review and that Petitioner's targeted dumping analysis is nevertheless flawed. Moreover, CPZ/SKF argues, even if the Department found that targeted dumping occurred, it is prohibited from using zeroing.

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margins for the mandatory respondent, the Department applied the calculation methodology adopted in *Final Modification for Reviews.* In particular, the Department compared monthly weighted-average CEP with monthly weighted-average NV and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to continue to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in this administrative review in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

U.S. Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for CPZ/SKF's sales because the exporter first sold subject merchandise to its affiliated company in the United States, Peer/SKF, which in turn sold subject merchandise to unaffiliated U.S. customers. We calculated CEP based on prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation and foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duty, U.S. warehousing expenses, U.S. inland freight from port to the warehouse, and, where applicable, U.S. inland freight from the warehouse to the customer.

In accordance with section 772(d)(1) of the Act, the Department deducted

[28] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[29] *See* ZXY's SRA, dated September 26, 2011.

[30] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012)(''*Final Modification for Reviews*''). In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[31] *See* Petitioner's Pre-Preliminary Comments at 8.

[32] *Id.* at 9–10, citing *Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 76 FR 68129 (Nov. 3, 2011) and *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 76 FR 64318 (Oct. 18, 2011).

from the U.S. price commissions paid to unaffiliated selling agents, inventory carrying costs, credit expenses, repacking expenses, and U.S. indirect selling expenses, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[33]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by CPZ/SKF for materials, labor, and packing, but excluded energy (*i.e.,* electricity and coal). *See* Surrogate Value Memorandum for further discussion regarding energy reporting in financial statements.

In the instant review, CPZ/SKF reported sales that were further manufactured or assembled in a third country. Consistent with *TRBs 2007–2008, TRBs 2008–2009,* and *TRBs 2009–2010,*[34] the Department has determined that the finishing operations in the third country do not constitute substantial transformation and, hence, do not confer a new country of origin for antidumping purposes. As such, we have determined NV for such sales based on the country of origin (*i.e.,* the PRC), pursuant to section 773(a)(3)(A) of the Act, because CPZ/SKF knew at the time of the sale of merchandise to the third country that it was destined for export to the United States. The Department also included the further manufacturing and assembly costs incurred in the third country, as reported by CPZ/SKF, in the NV calculation, as well as the expense of transporting the merchandise from the factory in the PRC to the further manufacturing plant in the third country.[35]

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by CPZ/SKF for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input if the quantities were meaningful and where the prices have not been distorted by dumping or subsidies.[36] To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[37] We considered the quality, specificity, and contemporaneity of the data.[38] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

On November 14, 2011, the Department invited all interested parties to submit publicly available information to value FOPs for consideration in the Department's preliminary results of review.[39] On December 15, 2011, Petitioner, CPZ/SKF, and ZXY submitted publicly available information to value FOPs for the preliminary results, and on December 23, 2011, Petitioner, CPZ/SKF, and ZXY submitted rebuttal comments. A detailed description of all surrogate values used for CPZ/SKF can be found in the Surrogate Value Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Thai import statistics in the Global Trade Atlas (''GTA''), published by Global Trade Information Services, Inc. (''GTIS'') and other publicly available Thai sources to calculate SVs for CPZ/SKF's FOPs (*i.e.,* direct material and packing materials) and certain movement expenses. The GTA reports import statistics, such as from Thailand, in the original reporting currency and, thus, these data correspond to the original currency value reported by each country. The record shows that data in the Thai import statistics, as well as those from several other Thai sources, are contemporaneous with the POR, product-specific, and tax-exclusive.[40] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Thai Producer Price Index (''PPI'') or Consumer Price Index (''CPI'') as published in the International Monetary Fund's *International Financial Statistics.*[41]

[33] *See* the Department's memorandum entitled, ''2010–2011 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Changshan Peer Bearing Company,'' dated concurrently with this notice (''CPZ/SKF Analysis Memorandum'').

[34] *See TRBs 2007–2008,* and accompanying IDM at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011) (''*TRBs 2008–2009*''), and accompanying IDM at Comment 6; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part,* 77 FR 2271 (January 17, 2012) (''*TRBs 2009–2010*'').

[35] *See* CPZ/SKF's Analysis Memorandum.

[36] *See Shakeproof Assembly Components Div of Ill Tool Works* v. *United States,* 268 F.3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[37] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *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).

[38] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying IDM at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying IDM at Comment 5.

[39] *See* Surrogate Countries Letter.

[40] *See* Surrogate Value Memorandum.

[41] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final*

Continued

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may reflect subsidized prices.[42] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[43] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[44] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[45]

CPZ/SKF claimed that certain of its reported raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, the Department uses the actual price paid by the respondent for those inputs, except when prices may have been distorted by dumping or subsidies.[46] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[47] we used the actual purchase prices of these inputs to value the full input. Accordingly, where applicable, we valued CPZ/SKF's inputs using the ME currency prices paid where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[48] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see* CPZ/SKF Analysis Memorandum.

CPZ/SKF reported separate FOP information for merchandise produced by CPZ/SKF, and for merchandise which was produced by CPZ prior to its acquisition by SKF (''pre-acquisition CPZ''). For those POR sales of merchandise produced by pre-acquisition CPZ, CPZ/SKF reported the FOPs from pre-acquisition CPZ. For all POR sales of merchandise produced after the acquisition by SKF, CPZ/SKF reported its own FOPs.

We valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods in Thailand in a 20-foot container. The price list was published in the World Bank publication, *Doing Business in Thailand.* The publication's methodology indicates that the data covers the period of June 1, 2010, through May 31, 2011, so it is concurrent with the POR, and no inflation was necessary.

We valued truck freight using Thai data published by the Thailand Board of Investment's *Costs of Doing Business in Thailand* and distances between Thai cities published on Google Maps: *https://maps.google.com.* The rates were in effect prior to the POR, so we adjusted them to be contemporaneous with the POR, using PPI.[49]

Where appropriate, we valued air freight using the rates published on the UPS Web site: *http://www.ups.com.* These rates are publicly available and cover a wide range of air routes which are reported on a daily basis. Because these rates were in effect after the POR, we adjusted them using PPI.

CPZ/SKF reported that more than 33 percent of its international ocean freight was purchased from ME suppliers in ME currency, so the Department valued NME ocean freight purchases using CPZ/SKF's ME ocean freight purchases during the POR.[50]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[51] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

In these preliminary results, the Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value CPZ/SKF's labor, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook for total manufacturing wage data. Although the Department found that the two-digit description under ISIC-Revision 3 for Sub-Classification 29 (''Manufacture of Machinery and Equipment NEC'') is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act. Because these rates were in effect before the POR, we are adjusting the labor value for inflation. A

Determination, 74 FR 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009).

[42] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (''*OTCA 1988*'') at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[43] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

[44] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 76 FR 34048, unchanged in *TRBs 2008–2009.*

[45] *See id.*

[46] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[47] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[48] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[49] *See* Surrogate Value Memorandum.

[50] *See id.*

[51] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

more detailed description of the wage rate calculation methodology, and the calculated wage rate, is provided in the Surrogate Value Memorandum.

Pursuant to 19 CFR 351.408(c)(4), the Department valued factory overhead, selling, general and administrative expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. For these preliminary results, we used the average of the ratios derived from the financial statements of three Thai producers of TRBs: JTEKT (Thailand) Company Limited (for the year ending on December 31, 2010), Koyo Joint (Thailand) Company Limited (for the year ending on December 31, 2010), and NSK Bearing Manufacturing (Thailand) Co., Ltd. (for the year ending on March 31, 2011). We find that these financial statements constitute the best available information with which to determine the financial ratios. All three financial statements cover a period overlapping the POR and are thus contemporaneous with the POR.[52]

As stated above, the Department used Thailand's ILO data reported under Chapter 6A of Yearbook, which reflect all costs related to labor, including wages, benefits, housing, training, *etc.* Since the financial statements used to calculate the surrogate financial ratios do not include itemized detail of indirect labor costs, the Department has not made adjustments to the surrogate financial ratios.

CPZ/SKF reported that steel scrap was recovered as a by-product of the production of subject merchandise and successfully demonstrated that the scrap has commercial value. Therefore, we have granted a by-product offset for the reported steel scrap, valued using Thai GTA data.[53]

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 2010, through May 31, 2011:

Exporters	Weighted-average percent margin
Changshan Peer Bearing Co., Ltd	7.74
Xiang Yang Automobile Bearing Co., Ltd	7.74

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[54] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[55]

Any interested party may request a hearing within 30 days of publication of this notice.[56] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[57]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. CPZ/SKF reported the name of the importer of record and the entered value for all of its sales to the United States during the POR. If CPZ/SKF's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[58] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the 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 the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, 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 that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

[52] *See* Surrogate Value Memorandum.

[53] *See id.*

[54] *See* 19 CFR 351.309(c).

[55] *See* 19 CFR 351.309(d).

[56] *See* 19 CFR 351.310(c).

[57] *See* 19 CFR 351.310(d).

[58] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

Dated: June 28, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–16726 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 120530125–2125–01]

Draft NIST Interagency Report (NISTIR) 7823, Advanced Metering Infrastructure Smart Meter Upgradeability Test Framework; Request for Comments

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on Draft NISTIR 7823, *Advanced Metering Infrastructure Smart Meter Upgradeability Test Framework* (Draft NISTIR 7823). This draft document provides an example test framework and conformance test requirements for the firmware upgradeability process for the Advanced Metering Infrastructure (AMI) Smart Meters. The target audience for Draft NISTIR 7823 includes numerous stakeholders in the Smart Grid space, particularly customers, Smart Meter manufacturers, certifying bodies, test labs, and standards development organizations.

DATES: Comments must be received by August 9, 2012.

ADDRESSES: Written comments concerning the document may be sent to: Information Technology Laboratory, ATTN: Michaela Iorga, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930.

Electronic comments should be sent to: Michaela Iorga at *michaela.iorga@nist.gov,* with a Subject line: NISTIR 7823 Comments

Draft NISTIR 7823, *Advanced Metering Infrastructure Smart Meter Upgradeability Test Framework,* is available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/PubsDrafts.html.*

FOR FURTHER INFORMATION CONTACT: Michaela Iorga, (301) 975–8431, email: *michaela.iorga@nist.gov,* or Nelson Hastings, (301) 975–5237, email: *nelson.hastings@nist.gov,* National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930.

SUPPLEMENTARY INFORMATION: NIST publishes this notice to solicit comments on Draft NISTIR 7823, *Advanced Metering Infrastructure Smart Meter Upgradeability Test Framework* (Draft NISTIR 7823). This draft document proposes an example test framework and conformance test requirements for the firmware upgradeability process for the Advanced Metering Infrastructure (AMI) Smart Meters. The conformance test requirements in the Draft NISTIR 7823 are derived from the National Electrical Manufacturers Association (NEMA) *Requirements for Smart Meter Upgradeability* standard, which defines requirements for Smart Meter firmware upgradeability in the context of an AMI system for industry stakeholders such as regulators, utilities, and vendors. Draft NISTIR 7823 identifies test procedures that the vendors and testers can voluntarily use to demonstrate a system's conformance with the NEMA standard. The testing procedures identified as ''Required Vendor Information'' apply to vendors, and the procedures identified as ''Required Test Procedures'' apply to testers.

Draft NISTIR 7823 includes a description of conformance tests that apply to Smart Meters and Upgrade Management System (UMS). The conformance tests applicable to Smart Meters are described in the following sections: Section 2, the Mandatory Functional Requirements, Section 3, the Conditional Functional Requirements, Section 4, the Optional Functional Requirements, and Section 5, the Non-testable Functional Requirements. The conformance tests applicable to UMS are described in Section 6.

The test framework identified in the Draft NISTIR 7823 is intended to provide objectivity and repeatability in the testing process, and to ensure that a consistent method is used to assess conformance with the NEMA Requirements for Smart Meter Upgradeability. The NEMA specification does not address specific details on the interfaces, commands, or protocols needed to achieve a firmware upgrade, nor does it specify how the functional and security requirements contained in the specification are to be implemented.

Draft NISTIR 7823 provides a high-level overview of the test procedures, in addition to providing more detailed steps for conducting the test, reviewing test results, and producing records to assess and report on results of the test.

Comments are requested on the test framework, conformance test requirements, and test procedures described in the document.

Dated: July 2, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–16727 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Programs Division

AGENCY: Coastal Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of extension of deep sea hard mineral exploration licenses and amended exploration plan.

SUMMARY: On February 29, 2012, NOAA published a notice and request for comments in the **Federal Register** at 77 FR 12245 on the request of Lockheed Martin Corp. to extend the deep seabed hard mineral exploration licenses USA–1 and USA–4 issued under the Deep Seabed Hard Mineral Resources Act (DSHMRA; 30 U.S.C. 1401–1473) and approve the amended exploration plan for those licenses.

No comments were received objecting to the approval of the extension and amended exploration plan. Comments were received only from the Western Pacific Fisheries Management Council (WPFMC) and the United States Department of State. The WPFMC noted that none of the fisheries under its jurisdiction were likely to be affected by any activities outlined in the extension request. The Department of State noted that international recognition of the areas covered by the licenses requires approval by the International Seabed Authority (ISA) and that without accession of the United States to the Law of the Sea (LOS) Convention, the United States cannot sponsor a U.S. company at the ISA. The Department further noted that if the U.S. accedes to the LOS Convention that it would be necessary to make conforming changes to these exploration licenses. NOAA acknowledges and accepts the comments from WPFMC and the Department of State.

Under its authority and in conformance with the requirements under DSHMRA and the DSHMRA regulations at 15 CFR part 970, NOAA approved the extension of both licenses for five years along with the amended

exploration plan on June 1, 2012. No changes have been made to the terms, conditions or restrictions of the licenses.

FOR FURTHER INFORMATION CONTACT: Kerry Kehoe, Coastal Programs Division (NORM/3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring MD 20910; email *Kerry.Kehoe@noaa.gov.*

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: June 29, 2012.

David M. Kennedy,

Assistant Administrator for the National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–16794 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's Administrative Committee will hold a meeting.

DATES: The meeting will be held on July 31, 2012, from 10:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Doubletree by Hilton San Juan Hotel, 105 De Diego Avenue, San Juan, Puerto Rico 00911.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council's Administrative Committee will hold a meeting to discuss the items contained in the following agenda:

July 31, 2012—10:30 a.m. to 4 p.m.

- Call to Order
- Adoption of Agenda
- Budget Status
- Personnel Matters—New Staff Position(s)
- Scientific and Statistical Committee/Advisory Panel Membership
- Other Business

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 5, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16800 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR Steering Committee Meeting.

SUMMARY: The SEDAR Steering Committee will meet via conference call to discuss the SEDAR assessment schedule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet on Tuesday, August 7, 2012, from 10 a.m. to 11 a.m., EDT.

ADDRESSES: The meeting will be held via conference call. Listening stations are available at the following locations: South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405; Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; and Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: John Carmichael, Science and Statistics Program Manager, SAFMC, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee provides oversight of the SEDAR process, establishes assessment priorities, and provides coordination of assessment and management activities. During this conference call the Steering Committee will discuss stocks to be assessed in 2013 for the South Atlantic region.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office at the address listed above at least 10 business days prior to the meeting.

Dated: July 5, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16801 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Amendment 24 Workgroup will hold a work session, which is open to the public.

DATES: The Workgroup's work session will occur from 1 p.m. to 4:30 p.m. on Wednesday, August 1 and continue on Thursday, August 2, 2012, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The work sessions will be held at the Building 9 Large Conference Room, NOAA Fisheries, NOAA Western Regional Center, 7600 Sand Point Way NE., Seattle, WA 98115–6349.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Duffy, NOAA Fisheries Northwest Region, (206) 526–4743 or Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The Council formed the Amendment 24 Workgroup to develop proposals for modifying the process to periodically establish and adjust harvest levels and management measures for the Pacific Coast groundfish fishery. Currently Council decisionmaking occurs every 2 years to set harvest specifications and management measures for the next 2-year period. Coordinating Council decisionmaking with the procedural requirements of the National Environmental Policy Act, Administrative Procedure Act, and the Magnuson-Stevens Fishery Conservation and Management Act, such that National Marine Fisheries Service may implement regulations at the start of the next fishing year (January 1), has proved difficult. The Workgroup will develop alternatives to the current biennial process to address problems with timely implementation. These alternatives will be presented to the Council at a future meeting. The Council may then adopt an alternative for implementation, which may require an amendment to the Pacific Coast Groundfish Fishery Management Plan.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: July 5, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–16802 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB054

Endangered Species; File No. 16598

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc. (Responsible Party and Principal Investigator: Michael Bresette), 4160 NE. Hyline Drive, Jensen Beach, FL 34957, has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 5, 2012, notice was published in the **Federal Register** (77 FR 13096) that a request for a scientific research permit to take green, loggerhead, hawksbill, and Kemp's ridley sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Permit Holder is authorized to conduct long-term research on the demographics and movements of green, loggerhead, hawksbill, and Kemp's ridley sea turtles in the Key West National Wildlife Refuge and the Big Bend of Florida. The objectives of the research are to: (1) Obtain information on sea turtle abundance, size frequencies, and sex ratios; (2) determine the genetic origin of sea turtle populations in the region; (3) continue to monitor turtle foraging habits; (4) track prevalence of fibropapilomatosis in sea turtles; (5) track green sea turtle movements west of the Marquesas Keys; and (6) identify habitat preferences of hawksbill sea turtles in the Key West National Wildlife Refuge. Up to 160 green, 160 loggerhead, 75 hawksbill, and 66 Kemp's ridley sea turtles may be captured annually for flipper and passive integrated transponder tagging, blood and tissue sampling, morphometrics, photography, and weights. A subset of sea turtles may be lavaged and/or satellite tagged. In addition to captures, researchers may conduct vessel surveys to observe and count sea turtles in the area. The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 5, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–16829 Filed 7–9–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the 2012 Tariff Preference Level (TPL) for Nicaragua Under the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR)

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 2012 TPL for Nicaragua.

DATES: *Effective Date:* July 10, 2012.

SUMMARY: This notice reduces the 2012 TPL for Nicaragua to 96,529,059 square meters equivalent to account for the shortfall in meeting the one-to-one commitment for cotton and man-made fiber woven trousers exported from Nicaragua to the United States.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2582.

SUPPLEMENTARY INFORMATION:

Authority: Annex 3.28 of the CAFTA–DR; Section 1634(a)(2) and (c)(2) of the Pension Protection Act of 2006 (Pub. L. 109–280); Presidential Proclamation 8111 of February 28, 2007.

Background: Annex 3.28 of the CAFTA–DR establishes a TPL for non-originating apparel goods of Nicaragua. Section 1634(a)(2) of the Pension Protection Act references the exchange of letters between the United States and Nicaragua, which establishes the one-to-one commitment for cotton and man-made fiber trousers. Section 1634(c)(2) of the Pension Protection Act authorizes the President to proclaim a reduction in the overall limit in the TPL if the President determines that Nicaragua has failed to comply with the one-to-one commitment. In Presidential Proclamation 8111, the President delegated to CITA the authority to determine whether Nicaragua had failed to comply with the one-to-one commitment and to reduce the overall limit in the TPL.

In an exchange of letters dated March 24 and 27, 2006, Nicaragua agreed that for each square meter equivalent (SME) of exports of cotton and man-made fiber woven trousers entered under the TPL, Nicaragua would export to the United States an equal amount of cotton and man-made fiber woven trousers made of U.S. formed fabric of U.S. formed yarn. Any shortfall in meeting this commitment that was not rectified by April 1 of the succeeding year would be applied against the TPL for the succeeding year. For 2011, the shortfall in meeting the one-to-one commitment is 3,470,941 square meters equivalent. This amount is being deducted from the 2012 TPL, resulting in a new TPL level for 2012 of 96,529,059 square meters equivalent.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2012–16834 Filed 7–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Institute of Education Sciences; Implementation of Title I/II Program Initiatives

SUMMARY: This evaluation will examine the implementation of core policies promoted by Title I and Title II at the state district, and school levels in four areas: content standards, assessments, accountability, and effective teachers and leaders.

DATES: Interested persons are invited to submit comments on or before September 10, 2012.

ADDRESSES: Written 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. 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 04888. 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.

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, Privacy, Information and Records Management 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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Implementation of Title I/II Program Initiatives.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 4,107.

Total Estimated Number of Annual Burden Hours: 2,191.

Abstract: Historically, Title I provides financial assistance to schools and districts with a high percentage of students from low-income families to help these students increase achievement. Title I also includes requirements that states hold schools and districts accountable for improvements in student achievement. Title II provides funds to increase academic achievement by improving teacher and principal quality including educator preparation and professional development, as well as providing funds for class-size reduction. This is the first submission of a request for approval of baseline data collection activities that will be used to support the Implementation of Title I/II Program Initiatives. This package requests approval for an initial data collection that will include surveys of all states and a nationally representative sample of school districts, schools, and Kindergarten through 12th grade teachers in spring 2013. The second package will request approval for the spring 2015 follow-up data collection.

Dated: July 5, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–16826 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; Pell Grant Experiments Study

SUMMARY: The Pell Grant Experiments evaluation is a two-part, five-year demonstration study sponsored by the U.S. Department of Education that focuses on the effects of expanded access to Pell grants on students' employment and earnings. The primary outcome of interest is (1) The employment status and earnings of students who participate in the study while secondary outcomes include (2) students' experiences with and participation in education and training, (3) measures of student debt and financial aid, and (4) the extent of participation in job search assistance services.

DATES: Interested persons are invited to submit comments on or before August 9, 2012.

ADDRESSES: Written 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. 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 04848. 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.

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, Privacy, Information and Records Management 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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell Grant Experiments Study.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 23,804.

Total Estimated Number of Annual Burden Hours: 5,732.

Abstract: This study consists of two experiments, each of which will examine the impact of a single change to the Pell grant eligibility criteria. The first experiment will relax the prohibition on receipt of Pell grants by students with a bachelors' degree. Individuals eligible for the first experiment must have a bachelor's degree, be unemployed or underemployed, and pursue a vocational training program up to one year in duration. The second experiment will reduce the minimum duration and intensity levels of programs that Pell grant recipients must participate in from 15 weeks with 600 minimum clock hours to eight weeks with 150 minimum clock hours. Each experiment will operate through a set of Pell grant experiment (PGE) schools that provide education and training services that qualify as PGE programs.

Participants in both experiments will be randomly assigned to either (1) a treatment group, which will have expanded access to Pell grants; or (2) a control group, which will not have access. Within both experiments, the treatment group will be very similar to the control at the time of random assignment except for access to Pell grants. Subsequent differences in the employment and earnings outcomes between treatment and control group members can then be attributed to Pell grant access. The first experiment will involve roughly 28 PGE schools with an average of 100 students participating per school. The second experiment will involve roughly 40 PGE schools with an average of 200 participating students per school. The expected sample of both experiments combined is approximately 10,800 students. Data for this evaluation will come from participants' Free Application of Federal Student Aid (FAFSA) applications, PGE school administrative records, Social Security Administration earnings statements, and a survey of study participants. The study participant enrollment period is expected to last from July 2012 to January 2014. Data extracts from FAFSA applications will occur between October and December during years 2012–2014. Adminstrative data extracts from PGE schools will occur between January and March during years 2013–2015. A stratified survey of treatment and control group members with a targeted total sample size of 2,000 will be fielded between July 2014 and March 2015.

Dated: July 5, 2012.

Darrin A. King,

Director, Information Collection Clearance Division Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–16830 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Disability and Rehabilitation Research Projects and Centers Program; Disability and Rehabilitation Research Projects; Burn Model Systems Centers; Correction

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects—Burn Model Systems Centers (CFDA 84.133A–3); correction.

SUMMARY: On June 20, 2012, we published in the **Federal Register** (77 FR 37012) a notice inviting applications for new awards for FY 2012 under Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects—Burn Model Systems Centers (CFDA 84.133A–3). In one location, we misstated the deadline for the transmittal of applications. This document corrects that error. We make no other changes to the notice.

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY) call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

We Make the Following Correction: On page 37013, in the second column, correct the date given for the ''Deadline for Transmittal of Applications'' to ''August 9, 2012.''

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

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: *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 by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: July 5, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–16831 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Veterans Upward Bound Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information; Veterans Upward Bound Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Number: 84.047V.

Dates:

Applications Available: July 10, 2012.

Deadline for Transmittal of Applications: August 9, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Upward Bound (UB) Program is one of the seven programs known as the Federal TRIO Programs, which provide postsecondary educational support for qualified individuals from disadvantaged backgrounds. The UB Program is a discretionary grant program that supports projects designed to provide the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education. There are three types of grants under the UB Program: Regular UB grants, UB Math and Science (UBMS) grants, and Veterans UB (VUB) grants. This notice announces the deadlines and other information only for VUB grants.

The VUB Program supports projects designed to prepare, motivate, and assist military veterans in the development of academic and other skills necessary for acceptance into and success in a program of postsecondary education.

The President has set a clear goal for our education system: By 2020, the United States will once again lead the world in college attainment. The Department views the VUB Program as a critical component in the effort to improve the quality of educational opportunities so that more veterans are well prepared for college and careers. To more strategically align VUB with overarching reform strategies for postsecondary completion, the Department is announcing two competitive preference priorities for this competition.

Priorities: There are two competitive preference priorities in this notice: *Competitive Preference Priority 1—Enabling More Data-Based Decision-Making* and *Competitive Preference Priority 2—Improving Productivity*. The two priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637).

For FY 2012 and any subsequent year in which the Department makes awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award additional points (up to 5 points for Competitive Preference Priority 1 and up to 5 points for Competitive Preference Priority 2) to an application, depending on how well the application meets each of these priorities.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priority or priorities they have addressed. The priority or priorities addressed in the application must also be listed on the VUB Program Profile Sheet.

These priorities are:

Competitive Preference Priority 1—Enabling More Data-Based Decision-Making (Up to 5 additional points).

Background: The Department is using *Competitive Preference Priority 1—Enabling More Data-Based Decision-Making* because data can be a crucial source of information in helping programs better serve the needs of participants and increase the odds that participants will pursue and succeed in postsecondary education. For VUB grantees, accurate and trustworthy data—particularly information from postsecondary education data systems about the outcomes of prior participants the grantee has served—provides an important way to gauge effectiveness and guide decisions regarding resource allocation and improvements.

Priority: Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success, and

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Note: Applicants proposing to use data to improve decision-making might want to

consider demonstrating their ability to access, through the State's longitudinal data system or other reliable third-party sources, high-quality, timely, accurate, and reliable data on postsecondary enrollment, course taking, persistence, and completion. Applicants may also want to consider discussing how they would incorporate these data into their projects to increase transparency and improve decision making on the part of veteran participants, especially with respect to preparing for, evaluating, and selecting a program of postsecondary education.

Competitive Preference Priority 2—Improving Productivity (Up to 5 additional points).

Background: The Department is using *Competitive Preference Priority 2—Improving Productivity* because it believes that it is more important than ever to support projects that are designed to significantly increase efficiency in the use of resources while improving student outcomes. A key performance measure for the VUB Program is the efficiency measure—cost per successful outcome, where a successful outcome is defined by the percentage of students enrolling in postsecondary education one year after program completion. Applicants proposing projects designed to decrease their cost per participant while improving student outcomes will be more likely to perform well on this efficiency measure.

Priority: Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in the notice), or other strategies.

Note: The types of projects identified above are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant for this notice. Other strategies for productivity could include the use of technology, coordination of services, or innovative collaboration with local, State or Federal agencies that have an interest in serving veterans.

Note: Applicants addressing this priority might want to consider explaining how they will serve the same or an increased number of students at a lower cost per participant while improving or keeping steady student outcomes. Applicants might also want to consider describing how they will achieve this productivity by increasing efficiency in the use of resources.

Definitions: The following definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to Competitive Preference Priority 1 and Competitive Preference Priority 2.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–13.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, (except for 75.215 through 75.221), 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 645. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,124,058.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000 to $542,529.

Estimated Average Size of Awards: $280,429.

Maximum Award: For new applicants or existing grantees proposing to serve a new target area, the maximum award is equal to $250,000 to serve at least 125 eligible participants at a cost per participant that does not exceed $2,000.

For existing grantees: For an applicant that is currently receiving a VUB Program grant and applying for a grant to serve the same target area, the maximum award amount is equal to the greater of: (a) $250,000 to serve at least 125 participants or (b) an amount equal to the applicant's grant award amount for FY 2007, the first year of the previous grant cycle, to serve a number of participants such that the per participant cost does not exceed $2,250. The applicant must propose to serve at least 125 participants.

For example, an applicant that is eligible for a grant of $294,750 (an amount equal to the applicant's FY 2007 grant award) and is applying for the full $294,750 must propose to serve at least 131 participants.

For an applicant that is currently receiving a VUB Program grant that is serving at least 125 participants, but at a cost per participant exceeding $2,250, the applicant must either: (1) Propose to continue to serve at least 125 participants, but at a reduced award amount that is based on a $2,250 cost per participant (e.g. $281,250 to serve 125 participants at a $2,250 cost per participant); or (2) request an award amount equal to the applicant's grant award amount for FY 2007, but increase the number of participants proposed to be served, such that the per participant cost does not exceed $2,250.

For an applicant that is currently receiving a VUB Program grant that serves fewer than 125 participants, the applicant must propose to serve at least 125 participants, even if current per participant cost levels are at or below $2,250. For example, an applicant that is eligible for a grant of $250,000 (an amount equal to the applicant's FY 2007 grant award) and is applying for the full $250,000 must propose to serve at least 125 participants at a cost per participant of $2,000.

Pursuant to 34 CFR 645.43(a), we will reject any application that proposes a budget exceeding the maximum amount described in this section for a single budget period of 12 months. We will also reject any application that proposes a budget to serve fewer than 125 participants or proposes a budget that exceeds the maximum per participant cost, as explained earlier in this section.

Estimated Number of Awards: 34.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education; public and private agencies and organizations, including community-based organizations with experience in serving disadvantaged youth; secondary schools; and combinations of these institutions, agencies, and organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An applicant may submit more than one application for a VUB grant as long as each application describes a project that serves a different target area or target school or another designated different population (34 CFR 645.20(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 645.20(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site at: *http://www2.ed.gov/programs/triovub/index.html*. You can also request a copy of the application package from: Kenneth Foushee, Veterans Upward Bound Program, U.S. Department of Education, 1990 K Street NW., suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 60 pages. However, any application addressing the competitive preference priorities may include up to four additional pages for each priority addressed (a total of eight pages if both priorities are addressed) in a separate section of the application submission to discuss how the application meets the competitive preference priority or priorities. These additional pages cannot be used for or transferred to the project narrative. Partial pages will count as a full page toward the page limit. For purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Each applicant must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance Face Sheet (SF 424); Part II, the budget information summary form (ED Form 524); the assurances and certifications; the VUB Program Profile; or the one-page Project Abstract narrative. If you include any attachments or appendices, these items will be counted as part of Part III, the application narrative, for purposes of the page-limit requirement. You must include your complete response to the selection criteria, which also includes the budget narrative, in Part III, the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: July 10, 2012.

Deadline for Transmittal of Applications: August 9, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 645.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an

Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Veterans Upward Bound Grant Competition, CFDA number 84.047V, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Veterans Upward Bound Grant competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.047, not 84.047V).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kenneth Foushee, U.S. Department of Education, 1990 K St. NW., Room 7000, Washington, DC 20006–8510. Fax: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.047V) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.047V) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 645.31 and are listed in the application package.

Note: With the changes made to the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act of 2008, the VUB Program objectives have been standardized and the Department has updated 34 CFR 645.31(b) accordingly. (See 75 FR 65712, 65786–65787 (October 26, 2010).) Please note that applicants are required to use these objectives to measure performance under the program. Specifically, under the ''Objectives'' section of the selection criterion, 34 CFR 645.31(b)(2), which is worth nine points, applicants should address the standardized objectives related to (a) academic performance on standardized test (2 points), (b) education program retention and completion (3 points), (c) postsecondary enrollment (3 points), and (d) postsecondary completion (1 point).

2. *Review and Selection Process:* A panel of non-Federal readers will review each application in accordance with the selection criteria and the competitive preference priorities, pursuant to 34 CFR 645.30. The individual scores of the readers will be added and the sum divided by the number of readers to determine the reader score received in the review process. In accordance with 34 CFR 645.32, the Secretary will evaluate the prior experience (PE) of applicants that received a VUB Program project grant for project years 2008–2009, 2009–2010, and 2010–2011. Based upon that evaluation, the Secretary adds PE points earned to the application's averaged reader score to determine the total score for each application. The Secretary makes new grants in rank order on the basis of the total of the average reader score and PE points awarded to each application. Pursuant to 34 CFR 645.30(c), if there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the VUB Program. The Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and

send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the VUB Program is measured by the percentage of VUB participants who enroll in and complete postsecondary education. The following performance measures have been developed to track progress toward achieving program success:

1. The percentage of VUB participants who enrolled in postsecondary education;

2. The percentage of VUB participants who enrolled in a program of postsecondary education and who attained either an associate's degree within three years or a bachelor's degree within six years;

3. The percentage of VUB participants who enrolled in a program of postsecondary education and who in the first year of postsecondary education placed into college-level math and English without need for remediation;

4. The percentage of VUB participants who enrolled in a program of postsecondary education and who graduated on time –within four years for the bachelor's degree and within two years for the associate's degree;

5. The cost per successful participant.

Note: To assess the fifth performance measure on efficiency of the program, the Department will track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in postsecondary education by a VUB participant no later than one year after program completion. These performance measures constitute the Department's indicators of the success of the VUB program.

Grant recipients must collect and report data on steps they have taken toward achieving these goals. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kenneth Foushee, Veterans Upward Bound Program, U.S. Department of Education, 1990 K St. NW., room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *kenneth.foushee@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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: *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: *www.federalregister.gov.* Specifically, through the advance search feature on this site, you can limit your search to documents published by the Department.

You can view this document in text or PDF at this site, also *www.ed.gov/programs/drugtesting/applicant.html.*

Dated: July 5, 2012.

David Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–16839 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Disability and Rehabilitation Research Projects and Centers Program; Disability and Rehabilitation Research Projects; Employment of Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—Employment of Individuals With Disabilities

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–1.

Dates:

Applications Available: July 10, 2012.

Date of Pre-Application Meeting: July 31, 2012.

Deadline for Transmittal of Applications: August 24, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPS)

The purpose of DRRPs, which are under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additional information on DRRPS can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition. The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *DRRP priority for the Employment of Individuals with Disabilities* is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

(1) *General Disability Rehabilitation Research Projects (DRRP) Requirements.*

(2) *Employment of Individuals with Disabilities.*

Note: The full text of these priorities is included in the pertinent notice of final priorities published in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Average Size of Awards: $499,999.

Maximum Award: We will reject any application that proposes a budget exceeding $499,999 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

3. *Other:* Different selection criteria are used for DRRP research grants and development grants. Applicants must clearly indicate in the application whether they are applying for a research grant or a development grant and must address the selection criteria relevant to that grant type. Without exception, NIDRR will review each application based on the grant designation made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation as a research grant or a development grant.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–1.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 10, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 31, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 24, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the *Employment of Individuals with Disabilities* CFDA number 84.133A–1 must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the *Employment of Individuals with Disabilities* Competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140 PCP, Washington, DC 20202–2700, Fax: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–1), LBJ Basement Level 1, 400 Maryland

Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws

that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or a TTY call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

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: *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: *www.federalregister.gov.* Specifically, through the advanced search feature of this site, you can limit your search to documents published by the Department.

Dated: July 5, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–16832 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priority: Disability and Rehabilitation Research Projects and Centers Program; Disability Rehabilitation Research Project; Employment of Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

CFDA Number: 84.133A–1.

Final Priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Employment of Individuals With Disabilities

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for Employment of Individuals with Disabilities. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need.

DATES: *Effective Date:* This priority is effective August 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *lynn.medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority (NFP) is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice announces a final priority that NIDRR intends to use for a DRRP competition in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additional information on DRRPs can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on April 26, 2012 (77 FR 24934). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, four parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter—in reference to paragraph (a)(1)(i) of the priority, which addresses ''the impact of government policies and programs on employment outcomes of individuals with disabilities,''—noted that much is already known about the impact of government policy on disability employment outcomes and the work disincentives that are associated with income support and other disability benefits programs. This commenter recommended that we sharpen this research priority area to focus on policies that may encourage more people with disabilities to choose work.

Discussion: NIDRR understands that there is a strong and growing research literature related to the relationship between income support programs and work outcomes for individuals with disabilities. NIDRR developed the priority area on the ''impact of government policies and programs on employment outcomes for individuals with disabilities'' to be purposefully broad. There are a wide variety of policies and programs that may influence employment outcomes, including policies that may encourage individuals with disabilities to choose work. Applicants are free to propose research on policies that encourage more people with disabilities to choose work. However, NIDRR does not wish to preclude applicants from proposing research on a wide variety of potential policies and programs that may influence employment outcomes by focusing this priority area too narrowly.

Change: None.

Comment: One commenter suggested that research under this priority should focus on programs and policies that affect employment outcomes of individuals with disabilities. This commenter noted that research should focus not just on one policy but on the broader system of programs and policies that could influence employment outcomes. This commenter also noted that research under this priority should examine the extent to which policies and programs have different effects on the employment outcomes of individuals in different disability groups.

Discussion: The priority does not limit the research to examination of one policy. An applicant may propose to examine the broader system of programs and policies that could have an impact on employment outcomes. An applicant may also propose research on the extent to which policies and programs have different effects on the employment outcomes of individuals in different disability groups.

Change: None.

Comment: One commenter suggested that NIDRR specifically focus this priority on research that examines employment outcomes that are more complex than measuring whether individuals with disabilities obtain a job. This commenter specifically suggested a focus on outcomes related to employment of people with disabilities over the life span and on outcomes that measure the quality of employment. This commenter suggested that employment outcomes over the life span may be measured quantitatively by assessing the amount of time spent in the work force and that employment quality can be measured by type of job, earnings, job satisfaction, and advancement along a career trajectory.

Discussion: NIDRR agrees that employment outcomes for people with disabilities—like employment oucomes for all people—can be measured in a variety of ways. The introductory paragraph of this priority focuses on a broad range of outcomes, including ''increased employment rates, as well as hours of paid work, earnings and other compensation for individuals with disabilities as well as improved job and career satisfaction and other work-related outcomes for individuals with disabilities.'' Nothing in the priority precludes applicants from proposing to conduct research on employment outcomes over the life span, outcomes related to employment quality, or other similar outcomes. NIDRR does not wish to preclude applicants from proposing research on a wide variety of employment outcomes by limiting the priority to the types of outcomes that are suggested by the commenter.

Change: None.

Comment: In reference to paragraph (a)(2) of the proposed priority, one commenter noted that five-year research projects under this priority may potentially include more than one of the four stages of research defined in the priority. This commenter asked whether applicants must propose research in just one stage of research or whether they can can propose research that progresses through more than one stage of research.

Discussion: The proposed priority would have required an applicant to focus research on only one stage of research. NIDRR agrees that a grantee under this priority should have the flexibility to include research that spans more than one stage of research.

Change: We have modified paragraph (a)(2) to allow an applicant to focus its research on more than one stage of research. However, if the applicant's research covers multiple stages of research, the applicant must clearly specify each stage of research. Also, we have modified paragraph (b)(3) to indicate that if the applicant proposes research that can be categorized under more than one of the defined research stages, or research that progresses from one stage to another, the applicant must clearly specify those stages and provide a rationale for each.

Comment: None.

Discussion: Proposed paragraph (a)(1) stated that applicants could propose to conduct research activities, development activities, or both to achieve the priority's intended outcomes. The selection criteria that are available to review NIDRR applications under 34 CFR 350.54 include specific criteria related to the ''Design of Research Activities'' (34 CFR 350.54(c)) and specific criteria related to the ''Design of Development Activities'' (34 CFR 350.54(d)). In order to review all applications with the appropriate criteria, and with the same distribution of possible points, we are requiring applicants to propose either research or development activities—but not both. Similarly, for ease in the review process, we are also requiring applicants to specify in the application whether they will be proposing to conduct research or development activities.

Change: NIDRR has modified paragraph (a)(1) of the priority to require the DRRP to conduct either research or development activities. NIDRR has also modified paragraph (b) of the priority to require applicants to identify whether they will be proposing to conduct research or development activities.

Final Priority

Priority—Employment of Individuals With Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services

announces a priority for a Disability and Rehabilitation Research Project (DRRP) on Employment of Individuals with Disabilities.

The DRRP must contribute to the outcomes of increased employment rates, hours of paid work, earnings and other compensation for individuals with disabilities as well as improved job and career satisfaction and other work-related outcomes for individuals with disabilities.

(a) To contribute to these outcomes, the DRRP must—

(1) Choose to conduct either research activities or development activities and carry out the chosen type of activity consistently throughout the grant, in one or more of the following priority areas:

(i) The impact of government policies and programs on employment outcomes for individuals with disabilities.

(ii) Employer practices and workplace environments that contribute to improved employment outcomes for individuals with disabilities.

(iii) Preparedness of individuals with disabilities to participate in the current and future workforce.

(iv) Technology (including the systems that develop, evaluate, and deliver the technology) that support improved employment outcomes of individuals with disabilities.

(v) Practices and policies that contribute to improved employment outcomes for transition-aged youth.

(vi) Vocational rehabilitation (VR) practices that result in improved employment outcomes for individuals with disabilities.

(2) If conducting research under paragraph (a)(1) of this priority, focus its research on a specific stage of research. If the DRRP is to conduct research that can be categorized under more than one stage, including research that progress from one stage to another, those stages must be clearly specified. For purposes of this priority, the stages of research are as follows:

(i) Exploration. Exploration means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration stage of research may also be used to inform decisions or priorities.

(ii) Intervention Development. Intervention Development means the stage of research that focuses on generating and testing interventions that have the potential to improve employment outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(iii) Intervention Efficacy. Intervention efficacy means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(iv) Scale-Up Evaluation. Scale-up evaluation means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

(3) Conduct knowledge translation activities (i.e., training, technical assistance, utilization, dissemination) in order to facilitate stakeholder (e.g., individuals with disabilities, employers, policymakers, practitioners) use of the interventions, programs, technologies, or products that resulted from the research activities, development activities, or both, conducted under paragraph (a)(1) of this priority;

(4) Involve key stakeholder groups in the activities conducted under paragraphs (a)(1) and (a)(2) of this priority in order to maximize the relevance and usability of the interventions, programs, technologies, or products to be developed or studied under this priority.

(b) In its application, an applicant must describe how its proposed project will meet this priority. In particular, the applicant must—

(1) Identify, in its application, the priority area or areas on which its proposed research or development activities will focus; and

(2) Identify, in its application, whether it is proposing to conduct research or development activities.

(3) If conducting research under paragraph (a)(1) of this priority, identify and provide a rationale for the stage of research being proposed and the research methods associated with the stage. If the applicant proposes research that can be categorized under more than one of these research stages, or research that progresses from one stage to another, the applicant must clearly specify those stages and provide a rationale for each.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a

preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of the final priority is that establishing new DRRPs will improve the lives of individuals with disabilities. The new DRRPs will provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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 the 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.

Dated: July 5, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–16835 Filed 7–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14407–000]

City of Pendleton, OR; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14407–000.

c. *Date filed:* May 14, 2012.

d. *Applicant:* City of Pendleton, Oregon.

e. *Name of Project:* Energy Recovery Phase I Project.

f. *Location:* The proposed Energy Recovery Phase I Project would be located on a water supply pipeline for the City of Pendleton in Umatilla County, Oregon. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Robb Corbett, City of Pendleton, Oregon, 500 SW Dorian Ave. Pendleton, OR 97801 phone (541) 966–0201.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *robert.bell@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of the project:* The Energy Recovery Phase I Project proposes the following developments:

Well 1 Development

The Well 1 development would consist of: (1) An existing powerhouse containing one proposed generating unit with an installed capacity of 67.5 kilowatts; and (2) appurtenant facilities. The applicant estimates Well 1 would have an average annual generation of 0.292 gigawatt-hour.

Well 5 Development

The Well 5 development would consist of: (1) An existing powerhouse containing two proposed generating units with a total installed capacity of 65.5 kilowatts; and (2) appurtenant facilities. The applicant estimates Well 5 would have an average annual generation of 0.283 gigawatt-hour.

Well 14 Development

The Well 14 development would consist of: (1) An existing powerhouse containing one proposed generating unit with an installed capacity of 28.3 kilowatts; and (2) appurtenant facilities. The applicant estimates that Well 14 would have an average annual generation of 0.122 gigawatt-hour.

The entire project would have a total installed capacity of 161.3 kilowatts and an average annual generation of 0.697 gigawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14407, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16751 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14405–000]

Town of Waterville; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14405–000.

c. *Date filed:* May 7, 2012.

d. *Submitted By:* Town of Waterville.

e. *Name of Project:* Waterville Hydroelectric Project.

f. *Location:* On Kelley River, in the Town of Waterville, Lamoille County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Scott Johnson, Town of Waterville Planning Commission, PO Box 31, 850 VT Route 109, Waterville, VT 05492, (802) 888-5229 Ext. 124; *sjohnson@lamoillefamilycenter.org*.

i. *FERC Contact:* Samantha Davidson, (202) 502–6839 or *samantha.davidson@ferc.gov*.

j. Town of Waterville filed its request to use the Traditional Licensing Process on May 7, 2012. Town of Waterville provided public notice of its request on June 6, 2012. In a letter dated July 2, 2012, the Director of the Division of Hydropower Licensing approved Town of Waterville's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Vermont State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Town of Waterville filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16750 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool:

Order No. 1000–MISO–SPP Workshop—July 9–10

The above-referenced meeting will be held at:

Hilton St. Louis at the Ballpark, One South Broadway, St. Louis, MO 63102

The above-referenced meeting is open to the public.

Further information may be found at *http://spp.org/*.

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–1772–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1577–000, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER09–548–001, *ITC Great Plains, LLC*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC*

Docket No. ER09–35–001, *Tallgrass Transmission, LLC*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–24–000, *Pioneer Transmission LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–28–000, *Xcel Energy Services Inc.* v. *American Transmission Company, LLC*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov,* or contact Robert Sacknoff, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6758 or *robert.sacknoff@ferc.gov.*

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16756 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI12–8–000]

United Water; Notice of Declaration of Intention and Petition for Relief, and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI12–8–000.

c. *Date Filed:* June 11, 2012.

d. *Applicant:* United Water.

e. *Name of Project:* Arlington Wastewater Plant Demonstration Project.

f. *Location:* The proposed Arlington Wastewater Plant Demonstration Project will be located in the effluent outfall pipe of the Arlington Wastewater Plant, in the Town of Poughkeepsie, Dutchess County, New York.

g. *Filed Pursuant to:* 18 CFR part 24, section 24.1.

h. *Applicant Contact:* Jeffrey McDonald, PE, Project Director, Fuss & O'Neill, 146 Hartford Road, Manchester, CT 06040; telephone: (860) 646–2469, Ext. 5339; Fax: (860) 533–5143; email: *www.jmcdonald@fando.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or Email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* July 27, 2012.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI12–8–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Arlington Wastewater Plant Demonstration Project would consist of an experimental 15-kW hydrokinetic turbine generator, designed for use in the pipelines of municipal wastewater treatment facilities, which will be dropped into a 8-foot-long, 6-foot-wide, and 6-foot-deep concrete diversion chamber that is located along the 24-inch-diameter, 421-foot-long outfall pipe from the treatment plant. An outflow pipe from the diversion chamber deposits the treated water into the Hudson River. A 100-foot-long transmission line will connect the proposed project to the sewage treatment plant.

l. *Petition for Declaration of Intention:* United Water asks that it be allowed, without a license under part I of the Federal Power Act, to deploy, test, and study the type of facilities listed above, and use the power from the test devices to operate miscellaneous ventilation and lighting equipment at the treatment facility. The experimental hydrokinetic turbine generator will be tested for a limited time to determine its durability.

m. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16752 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13237–003–MA]

Whitman River Dam, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Crocker Dam Hydroelectric Project, to be located on the Whitman River, within the Township of Westminster, Worcester County, Massachusetts, and has prepared an Environmental Assessment (EA).

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnline Support@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments on the EA should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://*

www.ferc.gov/docs-filing/eComment.asp. You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426. Please affix ''Crocker Dam Hydroelectric Project No. 13237–003'' to all comments.

For further information, contact Jeff Browning at (202) 502–8677.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16749 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6931–000]

Nunn, Samuel A; Notice of Filing

Take notice that on June 29, 2012, Samuel A. Nunn submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, and 18 CFR part 45 and 18 CFR 385.204 (2012) of Federal Energy Regulatory Commission's (Commission) Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protest on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 20, 2012.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16755 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–81–000]

Wisconsin Electric Power Company; Notice of Petition for Declaratory Order

Take notice that on June 29, 2012, pursuant to the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 381.302 and 385.207, Wisconsin Electric Power Company (Wisconsin Electric) submitted a petition requesting the Commission to issue a declaratory order approving: (1) Wisconsin Electric's proposed accounting treatment of a coal contract buydown; and (2) waiver of the Commission's fuel clause regulation to allow Wisconsin Electric to recoup the cost of the coal contract buydown through Wisconsin Electric's cost-based, Formula Rate Wholesale Sales Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 30, 2012

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16754 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–80–000]

Notice of Petition for Enforcement and Declaratory Order; Exelon Wind 1, LLC; Exelon Wind 2, LLC; Exelon Wind 3, LLC; Exelon Wind 4, LLC; Exelon Wind 5, LLC; Exelon Wind 6, LLC; Exelon Wind 7, LLC; Exelon Wind 8, LLC; Exelon Wind 9, LLC; Exelon Wind 10, LLC; Exelon Wind 11, LLC; High Plains Wind Power, LLC

Take notice that on June 29, 2012, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Rule 207 (a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Exelon Wind 1, LLC, Exelon Wind 2, LLC, Exelon Wind 3, LLC, Exelon Wind 4, LLC, Exelon Wind 5, LLC, Exelon Wind 6, LLC, Exelon Wind 7, LLC, Exelon Wind 8, LLC, Exelon Wind 9, LLC, Exelon Wind 10, LLC, Exelon Wind 11, LLC, and High Plains Wind Power, LLC (the Exelon Wind Companies) filed a petition requesting the Commission take enforcement action under section 210(h) of PURPA, or in the alternative, issue a declaratory order finding that an order

issued by the Public Utility Commission of Texas in PUC Docket No. 37361 [1] fails to implement PURPA and the Commission's Regulations.[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 30, 2012.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16753 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Application of Southwestern Public Service Company for Authority to Revise its Tariff for Purchase of Non-Firm Energy from Qualifying Facilities,* PUC Docket No. 37361, Order of Aug. 19 2010, superseded by Order on Rehearing of Oct. 6, 2010.

[2] 18 CFR part 292 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–30–000]

SourceGas Distribution LLC; Notice of Petition for Rate Approval and Revised Statement of Operating Conditions

Take notice that on June 29, 2012, SourceGas Distribution LLC (SourceGas) filed a Rate Election and revised Statement of Operating Conditions (SOC) pursuant to sections 284.123 and 284.224 of the Commission's regulations, (18 CFR 284.123 and 284.224). SourceGas proposes to utilize rates that are the same as those contained in SourceGas' transportation rate schedules for comparable intrastate service on file with the Public Service Commission of Wyoming. In addition, SourceGas proposes to make certain housekeeping revisions to its SOC as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 11, 2012.

Dated: July 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–16748 Filed 7–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2012 Power Repayment Studies which show the need for an increase in annual revenues to meet cost recovery criteria. Such increased revenues are needed to cover increased costs associated with operating and maintaining the facilities as well as increased costs associated with compliance requirements of the North American Electric Reliability Corporation. Additional revenues are also needed to recover increased costs associated with investments and replacements to the hydroelectric generating facilities. The Administrator has developed a proposed Robert D. Willis rate schedule, which is supported by a power repayment study, to recover the required revenues. The June 2012 Revised Power Repayment Study indicates that the proposed rate schedule would increase annual revenues approximately 15.4 percent from $929,388 to $1,072,332 effective October 1, 2012 through September 30, 2016.[1]

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end on August 9, 2012. If requested, a combined Public Information and Comment Forum (Forum) will be held on July 31, 2012, in Tulsa, Oklahoma at 9 a.m.

Persons desiring the Forum to be held should indicate in writing to the Southwestern Administrator (see **FOR FUTHER INFORMATION CONTACT**) by letter, email or facsimile transmission (918–

[1] FERC on April 27, 2009 confirmed and approved the existing Robert D. Willis rate for the period October 1, 2008 through September 30, 2012. See 127 FERC ¶ 62072.

595–6656) by July 16, 2012, their intent to appear at such Forum.

ADDRESSES: The Forum will be held in Southwestern's office, Room 1460, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov.*

SUPPLEMENTARY INFORMATION: Originally established by Secretarial Order No. 1865 dated August 31, 1943, Southwestern is an agency within the U.S. Department of Energy created by the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903). Procedures for the confirmation and approval of rates for the Federal Power Marketing Administrations are found at title 18, part 300, subpart L of the Code of Federal Regulations (18 CFR part 300).

Southwestern markets power from 24 multi-purpose reservoir projects with hydroelectric power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these States plus Kansas and Louisiana. The costs associated with the hydropower facilities of 22 of the 24 projects are repaid via revenues received under the Integrated System rates, as are those of Southwestern's transmission facilities, which consist of 1,380 miles of high-voltage transmission lines, 25 substations, and 46 microwave and VHF radio sites. Costs associated with the Sam Rayburn and Robert D. Willis Dams, two Corps projects that are isolated hydraulically, electrically, and financially from the Integrated System, are repaid by separate rate schedules.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment Study using the existing rate. The Study indicates that Southwestern's legal requirement to repay the investment in power generating facility for power and energy marketed by Southwestern will not be met without an increase in annual revenues. The need for increased revenues is due to increased costs associated with annual operations and maintenance and to recover increased investments and replacements in the Corps hydroelectric generating facility. The Revised Power Repayment Study shows that additional annual revenues of $142,944 (a 15.4 percent increase) are needed to satisfy repayment criteria.

Because of concerns expressed by Southwestern's customers, during their informal participation in the development of the Power Repayment Studies, regarding the magnitude of the proposed increase, Southwestern is proposing to increase revenue in two steps over a two-year period. Since our current rates are sufficient to recover all average operation and maintenance expenses during the next two years, our ability to meet both annual and long-term repayment criteria is satisfied by increasing revenues in steps over the period.

The first step of the rate increase, beginning October 1, 2012, would incorporate one half of the required revenue or 7.7 percent ($71,472). The second step of the rate increase, beginning October 1, 2013, and ending on September 30, 2016, would incorporate the remaining one half of the revenue requirement ($71,472 or 7.7 percent). Southwestern will continue to perform its Power Repayment Studies annually, and if the 2013 results should indicate the need for additional revenues, another rate filing will be conducted and updated revenue requirements implemented for FY 2013 and thereafter.

Opportunity is presented for Southwestern's customers and other interested parties to receive copies of the Robert D. Willis Studies and the proposed rate schedule. If you desire a copy of the Robert D. Willis Power Repayment Studies with the proposed Rate Schedule, submit your request to the Director, Division of Resources and Rates, Office of Corporate Operations, Southwestern Power Administration, One West Third, Tulsa, OK 74103, (918) 595–6680 or via email to *swparates@swpa.gov.*

A Public Information and Comment Forum (Forum) is tentatively scheduled to be held on July 31, 2012, to explain to customers and interested parties the proposed rate and supporting studies and to allow for comments. A chairman, who will be responsible for orderly procedure, will conduct the Forum if a Forum is requested. Questions concerning the rate, studies, and information presented at the Forum will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing. Questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

Persons desiring the Forum to be held should indicate in writing to the Southwestern Administrator (see **FOR FURTHER INFORMATION CONTACT**) by letter, email or facsimile transmission (918–595–6656) by July 16, 2012, their intent to appear at such Forum. If no one so indicates his or her intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to Mr. James K. McDonald, Administrator, Southwestern, at least seven (7) calendar days prior to the Forum so that a list of forum participants can be developed. The chairman may allow others to speak if time permits.

A transcript of the Forum will be made. Copies of the transcript and all documents introduced will be available for review at Southwestern's offices (see **ADDRESSES**) during normal business hours. Copies of the transcript and all documents introduced may also be obtained, for a fee, from the transcribing service. A copy of all written comments or an electronic copy in MS Word on the proposed Robert D. Willis Rate is due on or before August 9, 2012. Comments should be submitted to Mr. James K. McDonald, Administrator, Southwestern (see **FOR FURTHER INFORMATION CONTACT**).

Following review of the oral and written comments and the information gathered in the course of the proceeding, the Administrator will submit the finalized Robert D. Willis Rate Proposal and Power Repayment Studies in support of the proposed rate to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and subsequently to the Federal Energy Regulatory Commission (Commission) for confirmation and approval on a final basis. The Commission will allow the public an opportunity to provide written comments on the proposed rate increase before making a final decision.

Dated: June 28, 2012.

James K. McDonald,

Administrator.

[FR Doc. 2012–16815 Filed 7–9–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0022; FRL; 9697–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Acid Rain Program Under Title IV of the Clean Air Act Amendments (Renewal); EPA ICR No. 1633.16

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 10, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0022.

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Docket Center, (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0022. 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with anydisk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9220; fax number: 202–343–2361; email address: *vansickle.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0022, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–9744. Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2009–0022.

Affected entities: Electric utilities, Industrial sources, and other persons.

Title: Acid Rain Program under Title IV of the Clean Air Act Amendments.

ICR number: EPA ICR No. 1633.16, OMB Control No. 2060–0258.

ICR status: This ICR is currently scheduled to expire on November 30, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with NO_X permitting requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,700.

Frequency of response: On occasion, quarterly, and annually.

Estimated total average number of responses for each respondent: 15.

Estimated total annual burden hours: 2,056,946 hours.

Estimated total annual costs: $288,922,970, includes $150,608,009 annualized capital and O&M costs.

Are there changes in the estimates from the last approval?

To date, there are no changes in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. However, EPA is still evaluating information that may lead to a change in the estimates.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: June 20, 2012.

Richard Haeuber,

Acting Director, Clean Air Markets Division.

[FR Doc. 2012–16807 Filed 7–9–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $694 million long-term guarantee to support the export of approximately $612 million in U.S. semiconductor manufacturing equipment to a dedicated foundry in Germany. The U.S. exports will enable the dedicated foundry to increase existing 300mm (non-DRAM) production capacity of logic semiconductors by approximately 34,000 wafers per month. Available information indicates that this new production will be consumed globally. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 432, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–16783 Filed 7–9–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, July 12, 2012 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2012.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571, (202) 565–3336.

Lisa V. Terry,

Assistant General Counsel.

[FR Doc. 2012–16593 Filed 7–9–12; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10375, Signature Bank, Windsor, CO

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Signature Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Signature Bank on July 8, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be

effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 5th day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–16805 Filed 7–9–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10240, Pinehurst Bank, St. Paul, MN

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Pinehurst Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Pinehurst Bank on May 21, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 5th day of July 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–16808 Filed 7–9–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–07]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is submitting the information collection entitled ''Advances to Housing Associates'' to the Office of Management and Budget (OMB) for review and approval of a three year extension of OMB control number 2590–0001, which is due to expire on July 31, 2012.

DATES: Interested persons may submit comments on or before August 9, 2012.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503.

For Further Information or Copies of the Information Collection Contact: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by telephone at (202) 649–3321, by electronic mail at *jonathan.curtis@fhfa.gov*, or by regular mail at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for making Federal Home Loan Bank (Bank) advances to nonmember mortgagees, which are referred to as ''housing associates'' in the regulations of the Federal Housing Finance Agency (FHFA).[1] Section 10b also establishes the eligibility requirements an applicant must meet in order to be certified as a housing associate.

Part 1264 of FHFA's regulations implements the statutory eligibility requirements and establishes uniform review criteria the Banks must use in evaluating applications from entities that wish to be certified as a housing associate. Specifically, section 1264.4 implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy those requirements.[2] Section 1264.5 authorizes the Banks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements.[3] It also permits an applicant to appeal a Bank's decision to deny certification to FHFA.

In part 1266 of FHFA's regulations, subpart B governs Bank advances to housing associates that have been approved under part 1264. Section 1266.17 establishes the terms and conditions under which a Bank may make advances to housing associates.[4] Specifically, section 1266.17(e) imposes a continuing obligation on a certified housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements, as set forth in part 1264.[5]

The OMB control number for the information collection, which expires on July 31, 2012, is 2590–0001. The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

FHFA estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 14 hours. The estimate for the annual hour burden for applicants is 14 hours (1 applicant × 1 response per applicant × 14 hours).

FHFA estimates the total annual average number of maintenance respondents—that is, current housing associates—at 68, with 1 response per

[1] *See* 12 U.S.C. 1430b; 12 CFR 1264.3.

[2] *See* 12 CFR 1264.4.

[3] *See* 12 CFR 1264.5.

[4] *See* 12 CFR 1266.17.

[5] In 2010, FHFA transferred the regulations governing housing associates from part 926 of the regulations of the Federal Housing Finance Board, the former regulator of the Banks, to part 1264 of FHFA's regulations, and transferred the regulations governing Bank advances from part 950 of the Finance Board's regulations to part 1266 of FHFA's regulations. In both cases the regulations were transferred without substantive or material changes. *See* 75 FR 8239 (Feb. 24, 2010); 75 FR 76622 (Dec. 9, 2010).

housing associate. The estimate for the average hours per maintenance response is 4 hours. The estimate for the annual hour burden for current housing associates is 272 hours (68 certified housing associates × 1 response per associate × 4 hours).

The estimate for the total annual hour burden is 286 hours (14 hours + 272 hours).

C. Comment Request

In accordance with 5 CFR 1320.8(d), FHFA published a request for public comments regarding this information collection in the **Federal Register** on April 13, 2012.[6] The 60-day comment period closed on June 12, 2012. FHFA received no public comments.

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

Dated: June 29, 2012.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2012–16729 Filed 7–9–12; 8:45 am]

BILLING CODE 8070–01–P

[6] *See* 77 FR 22316 (April 13, 2012).

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 July 25, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *John Hinton Waters, Madalyn Kathlene Waters, Michael Thomas Waters, John Andrew Waters, Michael Jason Waters, Brittaney Laine McConkey, Charles Hilton Richards, Jr., Ted Rembert Townsend, all of Chatsworth, Georgia, and Jodi Waters Matter,* Marietta, Georgia; to collectively retain voting shares of First Chatsworth Bankshares, Inc., and thereby indirectly retain voting shares of First National Community Bank, both in Chatsworth, Georgia.

2. *The Robert Roschman Revocable Trust, Robert Roschman, trustee; The Lorrie Lei Roschman Revocable Trust, Lorrie Roschman, trustee; The Revocable Trust Created by Jeffrey S. Roschman, Jeffrey Roschman, trustee; CT Foundation, Betty Roschman, Roschman Restaurant Administration, and Kerry Roschman,* all of Fort Lauderdale, Florida; to collectively retain voting shares of Giant Holdings, Inc., and thereby indirectly retain voting shares of Landmark Bank, N.A., both in Fort Lauderdale, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Todd J. Zaun,* Sartell, Minnesota; to retain and acquire, and Steven M. Zaun, Marina Del Ray, California, to acquire, voting shares of Eden Valley Bancshares, and thereby indirectly acquire control State Bank in Eden Valley, both in Eden Valley, Minnesota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kevin D. Postier and J. B. Suddarth,* both of York, Nebraska; to acquire control of Henderson State Company, and thereby indirectly acquire control of Henderson State Bank, both in Henderson, Nebraska.

D. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Harlan D. Douglass, Maxine D. Douglass, and Harlan D. Douglass, Inc.,* all of Spokane, Washington, to retain voting shares of Northwest Bancorporation, Inc. and thereby indirectly retain voting shares of Inland Northwest Bank, both in Spokane, Washington.

Board of Governors of the Federal Reserve System, July 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–16820 Filed 7–9–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through November 30, 2015, the current PRA clearance requirements contained in the FTC Red Flags/Card Issuers/Address Discrepancies Rules [1] (''Red Flags Rule'' or ''Rule''). The current clearance expires on November 30, 2012.

DATES: Comments must be submitted on or before September 10, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Red Flags Rule, PRA Comment, Project No. P095406'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/RedFlagPRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, Attorney, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

The Rule implements sections 114 and 315 of the Fair Credit Reporting Act (''FCRA''), 15 U.S.C. 1681 *et seq.,* to

[1] 16 CFR 681.1; 16 CFR 681.2; 16 CFR part 641.

require businesses to undertake measures to prevent identity theft and to increase the accuracy of consumer reports.

Specifically, section 114 requires financial institutions and some creditors to develop and implement written Identity Theft Prevention Programs. Section 114 also mandates specific regulations that require credit and debit card issuers to assess the validity of notifications of changes of address under certain circumstances. Section 315 requires regulations that provide guidance on what users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency (''CRA'').

Since promulgation of the original Rule, President Obama signed the Red Flag Program Clarification Act of 2010 (''Clarification Act''), which narrowed the definition of ''creditor'' for purposes of section 114 of the FCRA. Specifically, the Clarification Act limits application of the Red Flags Rule to creditors that regularly and in the ordinary course of business: (1) Obtain or use consumer reports, directly or indirectly, in connection with a credit transaction; (2) furnish information to consumer reporting agencies in connection with a credit transaction; or (3) advance funds to or on behalf of a person, based on a person's obligation to repay the funds or on repayment from specific property pledged by or on the person's behalf. This third prong does not include a creditor that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person.

II. Description of Collection of Information

A. FCRA Section 114

The Rule requires financial institutions and covered creditors to develop and implement a written Identity Theft Prevention Program (''Program'') to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts. Under the Rule, financial institutions and certain creditors must conduct a periodic risk assessment to determine if they maintain ''covered accounts.'' The Rule defines that term ''covered account'' as either: (1) A consumer account that is designed to permit multiple payments or transactions, or (2) any other account for which there is a reasonably foreseeable risk of identity theft. Each financial institution and covered creditor that has covered accounts must create a written Program that contains reasonable policies and procedures to identity relevant indicators of the possible existence of identity theft (''Red Flags''); detect Red Flags that have been incorporated into the Program; respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and update the Program periodically to ensure it reflects change in risks to customers.

The Rule also requires financial institutions and covered creditors to: (1) Obtain approval of the initial written Program by the board of directors; a committee thereof or, if there is no board, an appropriate senior employee; (2) ensure oversight of the development, implementation, and administration of the Program; and (3) train staff, as needed, to implement the Program; and (4) exercise appropriate and effective oversight of service provider arrangements.

In addition, the Rule implements the section 114 requirement that financial institutions or covered creditors that issue debit or credit cards (''card issuers'') generally must assess the validity of change of address notifications. Specifically, if the card issuer receives a notice of change of address for an existing account and, within a short period of time (during at least the first 30 days), receives a request for an additional or replacement card for the same account, the issuer must follow reasonable policies and procedures to assess the validity of the change of address.

B. FCRA Section 315

The Rule also implements section 315 of the FCRA, requiring each user of consumer reports to have reasonable policies and procedures in place to employ when the user receives a notice of address discrepancy from a CRA. Specifically, each user of consumer reports must develop and implement reasonable policies and procedures to: (1) Enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report, when the user receives a notice of address discrepancy; and (2) furnish an address for the consumer that the user has reasonably confirmed is accurate to the CRA from which it receives a notice of address discrepancy, if certain conditions are met.

III. Burden Estimates

Overall estimated burden hours regarding sections 114 and 315, combined, total 2,629,940 hours and the associated estimated labor costs are $81,837,080. Staff assumes that affected entities will already have in place, independent of the Rule, equipment and supplies necessary to carry out the tasks necessary to comply with it.

A. FCRA Section 114

1. Estimated Hours Burden—Red Flags Rule

As noted above, the Rule requires financial institutions and certain creditors with covered accounts to develop and implement a written Program. Under the FCRA, financial institutions over which the FTC has jurisdiction include state chartered credit unions and certain insurance companies.

Although narrowed by the Clarification Act, the definition of ''creditor'' still covers a broad array of entities. Moreover, the Clarification Act does not set forth any exemptions from Rule coverage. Rather, application of the Rule depends upon an entity's course of conduct, not its status as a particular type of business. For these reasons, it is difficult to determine precisely the number of creditors subject to the FTC's jurisdiction. There are numerous small businesses under the FTC's jurisdiction that may qualify as ''creditors,'' and there is no formal way to track them. Nonetheless, FTC staff estimates that the Rule's requirement to have a written Program affects over 7,025 financial institutions [2] and 160,614 creditors.[3]

To estimate burden hours for the Red Flags Rule under section 114, FTC staff divided affected entities into two categories, based on the nature of their business: (1) Entities that are subject to high risk of identity theft and (2) entities that are subject to a low risk of identity theft, but have covered accounts that

[2] The total number of financial institutions (7,025) is derived from an analysis of state credit unions and insurers within the FTC's jurisdiction using 2007 Census data (the most recent Census data available) and, where also available, online industry data. The FTC's 2009 PRA submission estimated that the Rule affects over 57,000 financial institutions. 74 FR 42303, 42304 (Aug. 21, 2009). That figure also included, however, investment companies, broker dealers, and money service businesses. Those financial institutions are now covered by the Commodities Future Trading Commission and Securities and Exchange Commission, and, therefore, have been eliminated from the calculation of financial institutions in this submission, leaving the net amount of 7,025 financial institutions within the FTC's jurisdiction.

[3] The total number of creditors (160,614) is derived from an analysis of 2007 Census data and industry data for businesses or organizations that market goods and services to consumers or other businesses or organizations subject to the FTC's jurisdiction, reduced by entities not likely to: (1) Obtain credit reports, report credit transactions, or advance loans; and (2) entities not likely to have covered accounts under the Rule. As a result, the estimated number of covered creditors has decreased from nearly 2 million creditors in the FTC's 2009 submission to 160,614 creditors currently. See 74 FR at 42304.

will require them to have a written Program.

a. High-Risk Entities

FTC staff estimates that high-risk entities[4] will each require 25 hours to create and implement a written Program, with an annual recurring burden of one hour. FTC staff anticipates that these entities will incorporate into their Program policies and procedures that they likely already have in place. Further, FTC staff estimates that preparation for an annual report will require each high-risk entity four hours initially, with an annual recurring burden of one hour. Finally, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practice, already take steps to minimize losses due to fraud, including conducting employee training. Accordingly, only relevant staff need be trained to implement the Program: For example, staff already trained as part of a covered entity's anti-fraud prevention efforts do not need to be re-trained as incrementally needed. FTC staff estimates that training connected with the implementation of a Program of a high-risk entity will require four hours, and annual training thereafter will require one hour.

Thus, estimated hours for high-risk entities are as follows:

• 105,774 high-risk entities subject to the FTC's jurisdiction at an average annual burden of 13 hours per entity [average annual burden over 3-year clearance period for creation and implementation of a Program ((25+1+1)/3), plus average annual burden over 3-year clearance period for staff training ((4+1+1)/3), plus average annual burden over 3-year clearance period for preparing an annual report ((4+1+1)/3)], for a total of 1,375,062 hours.

b. Low-Risk Entities

Entities that have a minimal risk of identity theft,[5] but that have covered accounts, must develop a Program; however, they likely will only need a streamlined Program. FTC staff estimates that such entities will require one hour to create such a Program, with an annual recurring burden of five minutes. Training staff of low-risk entities to be attentive to future risks of identity theft should require no more than 10 minutes in an initial year, with an annual recurring burden of five minutes. FTC staff further estimates that these entities will require, initially, 10 minutes to prepare an annual report, with an annual recurring burden of five minutes.

Thus, the estimated hours burden for low-risk entities is as follows:

• 61,865 low risk entities that have covered account subject to the FTC's jurisdiction at an average annual burden of approximately 37 minutes per entity [average annual burden over 3-year clearance period for creation and implementation of streamlined Program ((60+5+5)/3), plus average annual burden over 3-year clearance period for staff training ((10+5+5)/3), plus average annual burden over 3-year clearance period for preparing annual report ((10+5+5)/3], for a total of 38,150 hours.

2. Estimated Hours Burden—Card Issuers Rule

As noted above, section 114 also requires financial institutions and covered creditors that issue credit or debit cards to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff estimates that the Rule affects as many as 17,978[6] card issues within the FTC's jurisdiction. FTC staff believes that most of these card issuers already have automated the process of notifying the cardholder or are using another means to assess the validity of the change of address, such that implementation will pose no further burden. Nevertheless, taking a conservative approach, FTC staff estimates that it will take each card issuer 4 hours to develop and implement policy and procedures to assess the validity of a change of address request for a total burden of 71,912 hours.

Thus, the total average annual estimated burden for Section 114 is 1,485,124 hours.

3. Estimated Cost Burden—Red Flags and Card Issuers Rules

The FTC staff estimates labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with compliance with the Rule, as they entail varying compensation levels of management (e.g., administrative services, computer and information systems, training and development) and/or technical staff (e.g., computer support specialists, systems analysts, network and computer systems administrators) among companies of different sizes. FTC staff assumes that for all entities, professional technical personnel and/or management personnel will create and implement the Program, prepare the annual report, and train employees, at an hourly rate of $42.[7]

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the Red Flags and Card Issuers Rules for Section 114 is $62,375,208 (1,485,124 hours × $42).

B. FCRA Section 315—The Address Discrepancy Rule

As discussed above, the Rule's implementation of Section 315 provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a CRA. Given the broad scope of users of consumer reports, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. As noted above, there are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Rule's implementation of section 315 affects approximately 2,449,605 users of consumer reports subject to the FTC's jurisdiction.[8] Commission staff estimates that approximately 10,000 of these users will receive notice of a discrepancy, in the course of their usual and customary business practices, and thereby have to furnish to CRAs an address confirmation.[9]

[4] High-risk entities include, for example, financial institutions within the FTC's jurisdiction and utilities, motor vehicle dealerships, telecommunications firms, colleges and universities, and hospitals.

[5] Low-risk entities include, for example, public warehouse and storage firms, nursing and residential care facilities, automotive equipment rental and leasing firms, office supplies and stationary stores, fuel dealers, and financial transactions processing firms.

[6] Card issuers within the FTC's jurisdiction include, for example, state credit unions, general retail merchandise stores, colleges and universities, and telecoms.

[7] This estimate is based on mean hourly wages found at *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf* (''Occupational Employment and Wages–May 2011,'' U.S. Department of Labor, released March 2012, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011'') for the various managerial and technical staff support exemplified above.

[8] This estimate is derived from an analysis of Census databases of U.S. businesses based on NAICS codes for businesses in industries that typically use consumer reports from CRAs described in the Rule, which total 2,449,605 users of consumer reports subject to the FTC's jurisdiction.

[9] Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions of 2003, Federal Trade Commission, 80 (Dec. 2004) available at *http://www.ftc.gov/reports/facta/041209factarpt.pdf.*

For section 315, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 1,144,816 hours. The estimated associated labor cost is $19,461.872.

1. Estimated Hours Burden

Prior to enactment of the Address Discrepancy Rule, users of consumer reports could compare the address on a consumer report to the address provided by the consumer and discern for themselves any discrepancy. As a result, FTC staff believes that many users of consumer reports have developed methods of reconciling address discrepancies, and the following estimates represent the incremental amount of time users of consumer reports may require to develop and comply with the policies and procedures for when they receive a notice of address discrepancy.

a. Customer Verification

Given the varied nature of the entities under the FTC's jurisdiction, it is difficult to determine precisely the appropriate burden estimates. Nonetheless, FTC staff estimates that it would require an infrequent user of consumer reports no more than 16 minutes to develop and comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, while a frequent user might require one hour. Similarly, FTC staff estimates that, during the remaining two years of clearance, it may take an infrequent user no more than one minute to comply with the policies and procedures it will employ when it receives a notice of address discrepancy, while a frequent user might require 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year, it will take users of consumer reports under the FTC's jurisdiction an average of 38 minutes [the midrange between 16 minutes and 60 minutes] to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden for users of consumer reports to comply with the Rule will be 23 minutes [the midrange between one minute and 45 minutes].

Thus, for these 2,449,605 entities, the average annual burden for each of them to perform these collective tasks will be 28 minutes [(38 + 23 + 23) ÷ 3]; cumulatively, 1,143,149 hours.

b. Address Verification

For the estimated 10,000 users of consumer reports that will additionally have to furnish to CRAs an address confirmation upon notice of a discrepancy, staff estimates that these entities will require, initially, 30 minutes to develop related policies and procedures. But, these 10,000 affected entities likely will have automated the process of furnishing the correct address in the first year of a three-year PRA clearance cycle. Thus, allowing for 30 minutes in the first year, with no annual recurring burden in the second and third years of clearance, yields an average annual burden of 10 minutes per entity to furnish a correct address to a CRA, for a total of 1,667 hours.

2. Estimated Cost Burden

FTC staff assumes that the policies and procedures for compliance with the address discrepancy part of the Rule will be set up by administrative support personnel at an hourly rate of $17.[10] Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is $19,461,872.

C. Burden Totals for FCRA Sections 114 and 315

Cumulatively, then, estimated burden is 2,629,940 hours (1,485,124 hours for section 114 and 1,144,816 hours for section 315) and $81,837,080 ($62,375,208 and $19,461,872) in associated labor costs.

IV. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 10, 2012. Write ''Red Flags Rule, PRA Comment, Project No. P095406'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[11] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/RedFlagPRA,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Red Flags Rule, PRA Comment, Project No. P095406'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

[10] This estimate is based on mean hourly wages found at *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf* (''Occupational Employment and Wages–May 2011,'' U.S. Department of Labor, released March 2012, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011'') for administrative support staff (computer operators, data entry, word processors and typists).

[11] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Web site at to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 10, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2012–16730 Filed 7–9–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''SMART-Indivo Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: A health care system adapting to the effects of an aging population, growing expenditures, and a diminishing primary care workforce needs the support of a flexible information infrastructure that facilitates innovation in wellness, health care, and public health. Flexibility is critical, since the system will have to function under new policies and in the service of new health care delivery mechanisms, and it will need to incorporate emerging information technologies on an ongoing basis.

SMART (Substitutable Medical Apps, Reusable Technologies, one of four Strategic Health IT Advanced Research Projects funded by the Office of the National Coordinator for Health Information Technology) capacitates innovation in health care by providing common APIs and standards for electronic medical records and personally controlled health records, enabling them to act as iPhone-like platforms; users can download or delete substitutable apps. Indivo enables individuals to own and manage a complete, secure, digital copy of their health and wellness information, integrated across sites of care and over time.

The ''SMART-Indivo Challenge'' is a call to developers to build an Indivo app that provides value to patients using data delivered through the SMART API and its Indivo-specific extensions.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Effective on July 9, 2012. Challenge submission period ends September 28, 2012, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866; Wil Yu, 202–690–5920.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

SMART <*http://www.smartplatforms.org*> (Substitutable Medical Apps, Reusable Technologies) is one of four Strategic Health IT Advanced Research Projects (SHARP) funded by the Office of the National Coordinator for Health Information Technology *http://healthit.hhs.gov/portal/server.pt?open=512&objID=1806&mode=2*

A health care system adapting to the effects of an aging population, growing expenditures, and a diminishing primary care workforce needs the support of a flexible information infrastructure that facilitates innovation in wellness, health care, and public health. Flexibility is critical, since the system will have to function under new policies and in the service of new health care delivery mechanisms, and it will need to incorporate emerging information technologies on an ongoing basis. SMART capacitates innovation in health care by providing common APIs and standards for electronic medical records and personally controlled health records, enabling them to act as iPhone-like platforms; users can download or delete substitutable apps. Each app is entirely modular, and can thus be readily substituted with new apps that provide improved functionality and usability. Continuous innovation is the result.

Indivo <*http://indivohealth.org*> enables individuals to own and manage a complete, secure, digital copy of their health and wellness information, integrated across sites of care and over time. Indivo is entirely free and open-source, and is designed as a platform for apps: Built to be extended and customized. Using the SMART API and standards, augmented by functionality like sharing, developers can create powerful patient-facing applications. Its objective is to lower the barriers to creating apps for health, leaving developers to be able to focus on their ideas.

The ''SMART-Indivo Challenge'' is a call to developers to build an Indivo app that provides value to patients using data delivered through the SMART API and its Indivo-specific extensions. The app will be either an HTML5 Web app or an iOS app that runs against the Indivo Developer Sandbox, where it can access patient demographics, medications, laboratory tests, and diagnoses using Web standards. Developers could, for example, build a medication manager, a health risk detector, a patient-friendly laboratory visualization tool, or an app that integrates external data sources (see *http://www.healthdata.gov/*) with patient records in real time.

More information about SMART and Indivo APIs can be found at *http://indivohealth.org/smart-indivo/.*

Mobile HTML5 web app submissions are welcome, as are native applications built on SMART's iOS Framework.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

(9) Personnel of the SHARP program and their students are not eligible to compete for the prize.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this challenge participants should either:

- Access the *www.challenge.gov* Web site and search for the ''SMART-Indivo Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2con.com/devchallenge/challenges/onc-i2-challenges/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

- First Prize: $10,000
- Second Prize: $2,000
- Third Prize: $1,000

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria:

- Usefulness to patients
- Importance to clinical medicine or public health
- Interface and presentation
- Use of the Indivo and SMART APIs
- Creative use of data from the sandbox and (optionally) from open health data sources

Additional Information

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Authority: 15 U.S.C. 3719.

Dated: June 28, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–16819 Filed 7–9–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for What's In Your Health Record Video Challenge

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Lygeia Ricciardi, Director, Office of Consumer eHealth.

ACTION: Notice.

SUMMARY: The Office of the National Coordinator for Health Information Technology (ONC) announces the launch of the *What's In Your Health Record Video Challenge.* This challenge is an open call for the public to create and submit short, compelling videos sharing how getting access to your health record and checking the information can help make sure you or your loved one get the best care. Having access to your health record is fundamental to your ability to participate in your health care.

Patients and their families have a legal right under the HIPAA Privacy Rule to request to see and get a copy of their health record (''right to access'') from most doctors, hospitals and other health care providers, such as pharmacies and nursing homes, as well as from their health plans. Patients can use that information to better understand their health, to coordinate their care with other health care providers or to help identify possible errors or omissions in their medical records. Patients can get access to their health information through a patient portal, or a personal health record (PHR) or by email.

This is the third in a series of Health IT video contests that will occur throughout 2012. The video contests are one way to crowd source stories from the public about how they are benefiting from health information technology (health IT). This is one way ONC is working to motivate and inspire individuals to play a more active role in their health. Each video contest will be a call to action for members of the public to create a short video clip [2 minutes or less] on a particular topic, and will award cash prizes to winners in several categories.

DATES: Effective on July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Erin Poetter, Consumer e-Health Policy Analyst, *erin.poetter@hhs.gov* 202.205.3310.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The *What's In Your Record? Video Challenge* invites you to create a short, compelling video (<2 min in length) sharing a personal story about how getting access (electronic or paper copy) to view your health record and knowing what's inside helped make sure you or your loved one got the best care. Being able to view what's in our medical record can empower us to play a more active role in our health care by allowing us to check to make sure the information on file is correct and complete (*e.g.* make sure no medications or allergies are missing), and that all the people who care for us have the right information available to make the best decisions about our health (*e.g.* if you are changing doctors or getting a second opinion from a specialist).

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of the Office of the National Coordinator

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

All individual members of a team must meet the eligibility requirements.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registration Process for Participants

1. During the Challenge Submission Period, visit *http://YourRecord.Challenge.gov* and register (Registration is free) or log in with an existing ChallengePost account. After a Contestant signs up, a confirmation email will be sent to the email address provided. The Contestant must use the confirmation email to verify his or her email address. The registered Contestant will then be able to enter a Submission.

2. On YourRecord.Challenge.gov, click ''Accept this challenge'' to register your interest in participating. This step ensures that you will receive important challenge updates.

3. Create a video and ensure the following (please read the Official Rules on *http://YourRecord.challenge.gov* for complete requirements):

a. Your video addresses questions such as:

i. What prompted you to ask for access to your health record?

ii. What did you find when you reviewed your health record?

iii. How did you, or your health care provider, improve your quality of care or that of a loved one after gaining access to your health record? In other words, what was the benefit of being able to view what was in your record?

iv. What did you, or your provider learn from accessing your health record? Was any information missing or incorrect?

v. What kinds of things were you able to do with your record once you had access to it? Share it with other providers? Check to make sure the information was correct? What else?

b. Your video gives a specific example (personal story, experience, testimonial, or thoughtful idea) of the benefits of having access to view your health record and the ability to review what is in your health record.

c. Your video encourages viewers to visit *www.HealthIT.gov* and to ask their health care provider to see and get a copy of their medical record.

d. Your video is no longer than 2 minutes.

4. Confirm that you have read and agreed to the Official Rules. A Contestant will be required to fill out the submission form on *YourRecord.Challenge.gov* and must provide:

- The title of the Video;
- A link to the Video on *YouTube.com* or *Vimeo.com* (the Video should be no longer than 2 minutes);
- A text description of how you or a loved one benefitted from having access to your health record
- A transcript of the words spoken or sung in the video; and
- Uploaded consent forms for everyone who appears in the video regardless of age.

All individuals that appear in a Video must complete and sign the Video Consent Form. If a minor appears in the Video, the minor's parent/legal guardian must also sign the Video Consent Form. A Submission will not be considered complete and eligible to win prizes without a completed Video Consent Form being uploaded from all individuals that appear in the Video. All completed Video Consent Forms must include a handwritten signature, and be scanned, combined in to a single file (ZIP, PDF, or doc), and uploaded on the submission form on *BloodPressure.Challenge.gov.*

Amount of the Prize

Winner	Prize	Quantity
First Prize	$3,000	1
Second Prize	2,000	1
Third Prize	1,000	1
Honorable Mention	500	2
Popular Choice Award	700	1

Basis Upon Which Winner Will Be Selected

Submissions that meet category requirements will be evaluated by an internal panel of judges for Category Prizes based on the following criteria (to be equally weighted):

1. *Quality of the Story* (Includes elements such as the authenticity and originality of your story and how you described getting a copy of your information and using it to improve your quality of care or the care of a loved one.)

2. *Potential Impact for motivating and inspiring others to access their health record* (Includes whether the video is compelling, instructive, and easy to follow so that others can achieve similar benefits after gaining access to their health record.)

The five (5) Contestants whose Submissions earn the highest overall score will win, the prize money as outlined in the chart. In the event of a tie, winners will be selected based on their score on the criteria described in (1) and then (2). If there is still a tie then the winner will be selected based on a vote by the judging panel.

Authority: 15 U.S.C. 3719.

Dated: June 28, 2012.

Erin Poetter,

Consumer e-Health Policy Analyst, Office of the National Coordinator for Health Information Technology (ONC), Office of the Secretary (OS).

[FR Doc. 2012–16821 Filed 7–9–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Workgroups on ICD–10–CM/PCS Conversion of Quality Indicators (QIs) — Extension Date for Nominations

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of date extension.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking nominations for members of approximately 10 multidisciplinary workgroups, to be convened by AHRQ's contractor, on ICD–10–CM/PCS conversion of the AHRQ Quality Indicators (QIs). This notice was previously published on June 4, 2012 *(http://www.gpo.gov/fdsys/pkg/FR–2012–06–04/pdf/2012–13306.pdf).*

DATES: Please submit nominations on or before July 22, 2012. Self-nominations are welcome. Third-party nominations must indicate that the individual has been contacted and is willing to serve on the workgroup. Selected candidates will be notified no later than July 31, 2012.

ADDRESSES: Nominations can be sent in the form of a letter or email, preferably as an electronic file with an email attachment and should specifically address the submission criteria as noted

below. Electronic submissions are strongly encouraged. Responses should be submitted to: Attn: John Bat, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Room 5119, Rockville, MD 20850, Email: *john.bott@AHRQ.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: John Bott, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Room 5119, Rockville, MD 20850, Email: *john.bott@AHRQ.hhs.gov;* Phone: (301) 427–1317; Fax: (301) 427–1430.

SUPPLEMENTARY INFORMATION: These workgroups are being formed as part of a structured approach for converting the existing QI specifications from ICD–9–CM to ICD–10–CM/PCS, incorporating coding expertise, clinical expertise, and health services research/quality measurement expertise. The workgroups will evaluate the results of automated 'code mapping'' from ICD–9–CM to ICD–10–CM/PCS, providing input and advice regarding similarities and differences between ICD–9–CM and ICD–10–CM/PCS codes that are mapped to each other. This workgroup process will lead to recommendations regarding how the existing AHRQ QIs should be re-specified using ICD–10–CM/PCS codes, retaining the original clinical intent of each indicator while taking advantage of the greater specificity of ICD–10–CM/PCS to improve the indicator's validity. Workgroup participation will be uncompensated.

For additional information about the AHRQ QIs, please visit the AHRQ Web site at *http://www.QUALITYindicators.AHRQ.gov.*

Specifically, each Workgroup on ICD–10–CM/PCS Conversion of Quality Indicators will consist of:

—At least three individuals with relevant clinical expertise (e.g., cardiovascular disease, neurologic disease, orthopedic and musculoskeletal disease, obstetrics and gynecologic disease, surgery, critical care and pulmonary disease, diabetes and endocrine disease, infectious disease, neonatology and pediatric disease, miscellaneous) and at least two individuals with relevant coding expertise.

—One or more individuals with field experience using AHRQ QI measures for assessing hospital performance.

—One or more individuals with expertise in validating ICD–9–CM or ICD–10–CM/PCS codes using chart abstraction (to assess criterion validity), or otherwise assessing their accuracy and usefulness in identifying individuals with specific adverse outcomes.

—One or more individuals with experience using data from the AHRQ Healthcare Cost and Utilization Project or similar data for the purpose of calculating AHRQ QIs.

Submission Criteria

To be considered for membership on a QI ICD–10–CM/PCS Conversion Workgroup, please send the following information for each nominee:

1. A brief nomination letter highlighting experience and knowledge relevant to the development, refinement, or testing of quality measures based on ICD9–CM and/or ICD–10–CM/PCS coded data, and demonstrating familiarity with the AHRQ QIs and health care administrative data. (See selection criteria below.) The nominee's clinical or coding profession and specialty, and the spectrum of his or her clinical or coding expertise, should be described. Please include full contact information of nominee: name, title, organization, mailing address, telephone and fax numbers, and email address.

2. Curriculum vita (with citations to any pertinent publications related to quality measure specification, ICD–9–CM, or ICD–10–CM/PCS).

3. Description of any financial interest, recent conduct, or current or planned commercial, non-commercial, institutional, intellectual, public service, or other activities pertinent to the potential scope of the workgroups, which could be perceived as influencing the workgroup's process or recommendations. The objective is not to prevent nominees with potential conflicts of interest from serving on the panels, but to obtain such information so as to best inform the selection of workgroup members, and to help minimize such conflicts.

Nominee Selection Criteria

Nominees should have technical expertise in health care quality measure development, refinement, or application, and familiarity with the ICD–9–CM and ICD–10–CM/PCS code sets (especially insofar as they are used to specify quality measures).

More specifically, each candidate will be evaluated using the following criteria:

—Knowledge of health care quality measurement using administrative data in specific, relevant clinical domains (e.g., cardiovascular disease, neurologic disease, orthopedic and musculoskeletal disease, obstetrics and gynecologic disease, surgery, critical care and pulmonary disease, diabetes and endocrine disease, infectious disease, neonatology and pediatric disease, miscellaneous);

—Peer-reviewed publications relevant to developing, refining, testing, or applying health care quality measures based on ICD-coded administrative data;

—Other experience developing, refining, testing, or applying health care quality measures based on ICD-coded administrative data;

—Expertise in ICD–9–CM and/or ICD–10–CM/PCS coding;

—Expertise in hospital quality improvement, patient safety, and/or clinical documentation improvement;

—Familiarity with the AHRQ Quality Indicators and their application; and,

—Availability to participate in conference calls and provide written comments starting from late August through October 2012.

Time Commitment

In an effort to solicit expert input and recommendations on conversion of the AHRQ QIs from ICD–9–CM to ICD–10–CM/PCS, we are initiating a technical review process that will require participation in approximately three to five conference calls with some pre and post evaluation time (estimated at 13 hours). Results from this process will influence the conversion of the AHRQ QI from ICD–9–CM to ICD–10–CM/PCS. Beginning in late August through October, selected nominees will be asked to participate in the following activities:

Workgroup Activities

1. Review the current ICD–9–CM specifications of AHRQ QIs within the workgroup's clinical domain (e.g., cardiovascular disease, neurologic disease, orthopedic and musculoskeletal disease, obstetrics and gynecologic disease, surgery, critical care and pulmonary disease, diabetes and endocrine disease, infectious disease, neonatology and pediatric disease, miscellaneous), along with background documents justifying or explaining those specifications (about 1.5 hours).

2. Participate in teleconference to explain the workgroup activities and processes, and to discuss current QI specifications and their justification (1.0 hours).

3. Review proposed mapping of ICD–9–CM to ICD–10–CM/PCS codes and identify relevant questions and concerns (about 3 hours).

4. Participate in teleconference to discuss the proposed mappings, including relevant questions and concerns (1.5 hours).

5. Following a structured process (e.g., modified Delphi), provide specific input to support or modify the proposed mappings (about 2.5 hours).

6. Participate in teleconference to discuss areas of disagreement among workgroup members, and to achieve consensus when possible (1.5 hours).

7. Following a structured process (e.g., modified Delphi), provide specific input to support or modify the proposed mappings, incorporating changes accepted in previous steps (about 1.0 hour).

8. Participate in final (optional) teleconference to review final recommendations and discuss contextual issues (1.0 hour).

Please note that should additional conference calls be necessary, workgroup members are expected to make every effort to participate. The workgroups will conduct business by telephone, email, or other electronic means as needed.

Background

The AHRQ Quality Indicators (AHRQ QIs) are a unique set of measures of health care quality that make use of readily available hospital inpatient administrative data. The QIs have been used for various purposes. Some of these include tracking, hospital self-assessment, reporting of hospital-specific quality or pay for performance. The AHRQ QIs are provider- and area-level quality indicators and currently consist of four modules: the Prevention Quality Indicators (PQI), the Inpatient Quality Indicators, the Patient Safety Indicators (PSI), and the Pediatric Quality Indicators (PedQIs). AHRQ is committed to converting the QIs from ICD–9–CM to ICD–10–CM/PCS in an accurate and transparent manner, taking advantage of the additional specificity of ICD–10–CM/PCS to improve the validity and usefulness of the QIs, from October 2014 onward.

Dated: July, 2, 2012.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2012–16734 Filed 7–9–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates:

8:30 a.m.–5:15 p.m., August 20, 2012
8:30 a.m.–4:30 p.m., August 21, 2012

Place: Hilton Garden Inn Pittsburgh/Southpointe, 1000 Corporate Drive, Canonsburg, Pennsylvania 15317. Telephone: (724) 743–5000, Fax: (724) 743–5010.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Discussed: The meeting will focus on engineering noise controls, reducing coal dust exposures, reducing injuries through improved illumination, demographics survey of the mining industry, implementation of the National Academy of Science's recommendations, oxygen supply partnership, safety culture, occupational health and safety management systems, preventing coal dust explosions, and reducing silica exposures.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jeffery L. Kohler, Ph.D., Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5301, fax (412) 386–5300.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 2, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–16776 Filed 7–9–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Anti-Infective 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: Anti-Infective 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 September 5, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Diane Goyette, 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, email: *AIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the appropriate advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 201688,

tobramycin inhalation powder, application submitted by Novartis Pharmaceuticals Corporation, and the requested indication of management of cystic fibrosis patients infected with the bacterium *Pseudomonas aeruginosa.*

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 August 21, 2012. 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 August 13, 2012. 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 August 14, 2012.

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 Diane Goyette 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: July 5, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–16811 Filed 7–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; Epigenetic Inheritance.

Date: July 26, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–2717, *leszcyd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16354 Filed 7–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: HIV Therapeutics.

Date: August 2–3, 2012.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Structure-Based HIV–1.

Date: August 2–3, 2012.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 3, 2012.

Time: 10:30 a.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR11–031: Brain Disorders in the Developing World.

Date: August 3, 2012.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Malaria Review.

Date: August 9–10, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 5, 2012.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16817 Filed 7–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences.

Date: July 26–27, 2012.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Computational Biophysics.

Date: July 31, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–017: Shared Instrumentation: Grant Program.

Date: August 8–9, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 5, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16818 Filed 7–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflit: Healthcare Delivery and Methodologies.

Date: July 16, 2012.

Time: 11:15 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–806–8250, *salaitak@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 3, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–16772 Filed 7–9–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0598]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0027,

Vessel Documentation and 1625–0104, Barges Carrying Bulk Hazardous Materials. Additionally, the U.S. Coast Guard requests an extension of its approval for the following collection of information: 1625–0052, Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 10, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0598] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *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.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St SW. Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–0598], and must be received by September 10, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0598], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0598'' in the ''Keyword'' box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice 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–2012–0598'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Requests

1. *Title:* Vessel Documentation.

OMB Control Number: 1625–0027.

Summary: The information collected will be used to establish the eligibility of a vessel to: (a) Be documented as a ''vessel of the United States,'' (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage.

The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.

Need: Title 46 U.S.C. Chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.

Forms: CG–1258, CG–1261, CG–1270, CG–1280, CG–1340, CG–1356, CG–4593, CG–5542, CG–7042, and CG–7043.

Respondents: Owners/builders of yachts and commercial vessels of at least 5 net tons.

Frequency: Annually.

Burden Estimate: The estimated burden has increased from 54,466 hours to 67,882 hours a year.

2. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 1625–0052.

Summary: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Such a tank, on an unmanned barge, 30 years old or older is subjected to nondestructive testing once every ten years.

Need: Under Title 46 U.S.C. 3703, the Coast Guard is responsible for ensuring safe shipment of liquid dangerous cargoes and has promulgated regulations for certain barges to ensure the meeting of safety standards.

Forms: N/A.

Respondents: Owners of tank barges.

Frequency: Every 10 years.

Burden Estimate: The estimated burden remains 130 hours a year.

3. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 1625–0104.

Summary: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. The requirements are necessary to ensure that barges meet safety standards and to ensure that barges' crewmembers have the information necessary to operate barges safely.

Need: Title 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules related to the carriage of liquid bulk dangerous cargoes. Title 46 CFR part 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Forms: N/A.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 29,281 hours a year to 28,958 hours.

Dated: June 29, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–16787 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0014]

RP9580.210, Personal Assistance Services in Shelters Fact Sheet

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Fact Sheet RP9580.210, *Personal Assistance Services in Shelters.* The purpose of this new fact sheet is to provide clarification on the eligibility of personal assistance services in congregate and transitional shelters under the Category B, Emergency Protective Measures provision of FEMA's Public Assistance Program.

DATES: Comments must be submitted by August 9, 2012.

ADDRESSES: Comments must be identified by docket ID FEMA–2012–0014 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed fact sheet is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Lu Juana Richardson, Public Assistance Division, via email at *LuJuana.Richardson@dhs.gov,* by phone (202) 646–3834, or facsimile at (202) 646–3288, or by mail Federal Emergency Management Agency, Public Assistance Division, Room 408–67, 500 C Street SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link on the homepage of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed fact sheet is available in docket ID FEMA–2012–0014. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2012–0014'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.'' Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

The fact sheet, RP9580.210, *Personal Assistance Services in Shelters* provides clarification on the eligibility of personal assistance services in congregate and transitional shelters under the Category B, Emergency Protective Measures provision of the FEMA's Public Assistance Program. FEMA will reimburse eligible applicants' reasonable costs associated with the provision of personal assistance services to persons with disabilities in congregate and transitional shelters. Personal assistance services include but, are not limited to, caring for self (grooming, eating, bathing, toileting, dressing and undressing), walking, transferring (moving to and or from a wheelchair or cot), taking medicines, communicating and accessing programs and services.

The proposed fact sheet does not have the force or effect of law.

FEMA seeks comment on the proposed fact sheet, which is available online at *http://www.regulations.gov* in docket ID FEMA–2012–0014. Based on the comments received, FEMA may make appropriate revisions to the proposed fact sheet. Although FEMA will consider any comments received in the drafting of the final fact sheet, FEMA will not provide a response to

comments document. When or if FEMA issues a final fact sheet, FEMA will publish a notice of availability in the **Federal Register** and make the final fact sheet available at *http://www.regulations.gov.* The final fact sheet will not have the force or effect of law.

Authority: 42 U.S.C. 5121–5207.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2012–16861 Filed 7–9–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1258]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 9, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1258, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
DeSoto County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/florida/de-soto/*	
City of Arcadia	City Hall, 23 North Polk Avenue, Arcadia, FL 34266.
Unincorporated Areas of DeSoto County	DeSoto County Planning Department, 201 East Oak Street, Arcadia, FL 34266.

Community	Community map repository address
Kent County, Rhode Island (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/KentCountyRIcoastal*	
City of Warwick	Planning Department, City Hall Annex Building, 2nd Floor, 3275 Post Road, Warwick, RI 02886.
Town of East Greenwich	Department of Public Works, Building Department, 111 Pierce Street, East Greenwich, RI 02818.
Providence County, Rhode Island (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/ProvidenceCountyRIcoastal*	
City of Cranston	City Hall, 869 Park Avenue, Cranston, RI 02910.
City of East Providence	City Hall, 145 Taunton Avenue, East Providence, RI 02914.
City of Pawtucket	City Hall, 137 Roosevelt Avenue, Pawtucket, RI 02860.
City of Providence	City Hall, Planning and Development Building, 25 Dorrance Street, Providence, RI 02903.
Big Horn County, Wyoming, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/wyoming/big-horn-2/*	
Town of Basin	209 South 4th Street, Basin, WY 82410.
Town of Byron	35 South Pryor, Byron, WY 82412.
Town of Cowley	20 South Division, Cowley, WY 82420.
Town of Deaver	112 1st Avenue West, Deaver, WY 82421.
Town of Frannie	311 5th Street, Frannie, WY 82423.
Town of Greybull	24 South 5th Street, Greybull, WY 82426.
Town of Lovell	336 Nevada Avenue, Lovell, WY 82431.
Town of Manderson	100 Railway Avenue, Manderson, WY 82432.
Unincorporated Areas of Big Horn County	417 Murphy Street, Basin, WY 82401.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–16862 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–N–18–C–1]

HUD's Fiscal Year (FY) 2012 Transformation Initiative: Natural Experiments Research Grant Program, Cancellation

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of cancellation of notice of funding availability.

SUMMARY: On February 14, 2012, HUD posted a Notice of Funding Availability (NOFA) ''Transformation Initiative: Natural Experiments Grant Program'' on Grants.gov. The close date of the NOFA was March 29, 2012, at 11:59 p.m. A total of 6 applications were received. None of the applications met the requirements contained in the Notice of Funding Availability. Therefore, HUD is cancelling this funding opportunity.

FOR FURTHER INFORMATION CONTACT: For questions concerning the NOFA please contact Mark Shroder at *Mark.D.Shroder@hud.gov* or 202–402–5922. This number is not toll-free. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Dated: June 28, 2012.

Erika C. Poethig,

Acting Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–16843 Filed 7–9–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[[FWS–R2–ES–2012–N129: FXES11130200000F5–123–FF02ENEH00]

Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Tres Rios Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The City of Phoenix (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (TE75475A–0) pursuant to the Endangered Species Act (Act), as amended. The requested permit, which is for a period of 50 years, would authorize incidental take of Yuma clapper rail (*Rallus longirostris yumanensis*) and southwestern willow flycatcher (*Empidonax traillii extimus*) as a result of operation and maintenance activities associated with the Tres Rios Project, and a potential return to baseline conditions. We invite the public to review and comment on the permit application and the associated draft Safe Harbor Agreement (SHA).

DATES: *Comment Period:* To ensure consideration of your written comments, they must be received on or before close of business (4:30 p.m. CST) August 9, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

- *Email: Mike_Martinez@fws.gov.* Include ''Arizona Ecological Services Field Office draft Tres Rios SHA'' in the subject line of the message.
- *Fax:* Attn: Field Supervisor, 602–242–2513.

• *U.S. Mail:* 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951.

• *In-Person Drop-off, Viewing, or Pickup:* Call 602–242–0210 to make an appointment (necessary for view/pickup only) during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Martinez, at the U.S. Fish and Wildlife Service, by mail at the address under **ADDRESSES**, by phone at 602–242–0210 x224, or by email at *Mike_Martinez@fws.gov.*

SUPPLEMENTARY INFORMATION: Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners, through enhancement of survival permits under section 10(a)(1)(A) of the Act, that they will not be subjected to increased property use restrictions as a result of increased target species abundance due to their efforts to improve conditions for listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The Applicant plans to conduct operation and maintenance activities associated with the Tres Rios Project, including, but not limited to, management of vegetation, roads, trails, water delivery systems, flood control capacity, and storm water facilities. The Tres Rios Project is a cooperative project between the Applicant and the U.S. Army Corps of Engineers to enhance and maintain 927 acres of Sonoran Desert and riparian biotic communities within and adjacent to the Salt River Channel from approximately 91st Avenue to the confluence with the Gila River, and within the Gila River Channel, from approximately the confluence with the Salt River to El Mirage Road, Phoenix, Arizona. The project area also includes the Hayfield Wetlands to the east.

The draft SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.;* NEPA), based upon completion of a NEPA screening form. Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA and its implementing regulations (40 CFR 1506.6).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available 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.

Authorities

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 CFR 4371 *et seq.*).

Dated: June 4, 2012.

Benjamin N. Tuggle,

Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2012–16775 Filed 7–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000, WYW180996]

Notice of Invitation To Participate; Coal Exploration License Application WYW180996, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Kiewit Mining Properties, Inc., on a pro rata cost-sharing basis, in its program for the exploration of coal deposits owned by the United States of America in Campbell County, Wyoming.

DATES: This notice of invitation was published in the *Gillette News-Record* once each week for 2 consecutive weeks beginning the week of June 11, 2012, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Kiewit Mining Properties, Inc., as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW180996): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; and BLM, High Plains District Office, 2987 Prospector Circle, Casper, Wyoming 82604. The written notice should be sent to the following addresses: Kiewit Mining Properties, Inc., Attn: Vince Mazzarella, P.O. Box 3027, Gillette, Wyoming 82717, and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Joyce Gulliver, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Joyce Gulliver, Land Law Examiner, at 307–775–6208. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Kiewit Mining Properties, Inc., has applied to the BLM for a coal exploration license on public land adjacent to their Buckskin Mine. The purpose of the exploration program is to obtain structural and quality information of the coal. The BLM regulations at 43 CFR 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following-described lands in Wyoming:

Sixth Principal Meridian

T. 52 N., R. 72 W.,
- Sec. 7, lots 5 to 20, inclusive;
- Sec. 8, lots 3 to 5, inclusive;
- Sec. 18, lots 6 to 11, inclusive, and lots 15 and 16;
- Sec. 19, lots 8, 9, and 16.

T. 52 N., R. 73 W.,
- Sec. 13, lots 9 to 11, inclusive, and lots 14 to 16, inclusive;
- Sec. 24, lots 1 to 3, inclusive, and lots 6 to 12, inclusive.

Containing 2,045.06 acres, more or less, in Campbell County.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM.

Larry Claypool,

Acting State Director.

Authority: 43 CFR 3410.2–1(c)(1).

[FR Doc. 2012–16853 Filed 7–9–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L51100000–GA0000–LVEMC10CC770, COC–74219]

Notice of Competitive Coal Lease Sale, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal reserves in the Wadge Seam described below in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m., on Wednesday, August 22, 2012. The sealed bid must be submitted on or before 9 a.m., on Wednesday, August 22, 2012.

ADDRESSES: The lease sale will be held in the Second Floor Conference Room of the Bureau of Land Management (BLM) Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Sealed bids must be submitted to the cashier, BLM Colorado State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Kurt Barton, Land Law Examiner, at 303–239–3714, or *kbarton@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Sage Creek Holdings, LLC. The Federal coal reserves to be offered consist of all Wadge Seam reserves recoverable by underground mining methods in the following described lands located in Routt County, Colorado:

Sixth Principal Meridian

T. 5 N., R. 87 W.,
Sec. 21, NE¼NE¼
Sec. 22, N½, and NW¼SW¼.
Containing 400 acres more or less.

The tract contains an estimated 3.2 million tons of recoverable coal reserves. The underground minable coal is ranked as bituminous C coal. The estimated coal quality on an as-received basis for the seam is as follows:

WADGE SEAM

British thermal unit (BTU)	12,776 BTU/lb. (percent)
Volatile Matter	38.21
Moisture	8.72
Fixed Carbon	45.27
Sulfur Content	0.41
Ash Content	7.39

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

The sealed bids should be sent by certified mail, return-receipt requested, or be hand delivered to the cashier, BLM Colorado State Office, at the address given above and clearly marked ''Sealed Bid for COC–74219 Coal Sale—Not to be opened before 10 a.m., on August 22, 2012'' The cashier will issue a receipt for each hand-delivered bid. Bids received after 9:00 a.m. on August 22, 2012 will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking, sealed-bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received.

Prior to lease issuance, the high bidder, if other than the applicant, must pay the BLM the cost recovery fees in the amount of $15,561.72 in addition to all processing costs the BLM incurs after the date of this sale notice (43 CFR 3473.2).

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale and available from the BLM Colorado State Office at the address above. Case file documents, COC–74219, are available for inspection at the BLM Colorado State Office Public Room.

Helen M. Hankins,

State Director.

[FR Doc. 2012–16828 Filed 7–9–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 012–2012]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States Department of Justice (DOJ), Federal Bureau of Investigation (FBI), proposes to establish a new system of records entitled, the FBI Data Warehouse System, JUSTICE/FBI–022, to cover all FBI data warehouses that have been or are created to manage the information necessary to carry out FBI's national security and criminal justice missions. The FBI is also deleting its Data Integration and Visualization System, JUSTICE/FBI–021, last published at 75 FR 53262 (Aug. 31, 2010), and modified at 75 FR 66131 (Oct. 27, 2010) because this new system duplicates it.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by August 9, 2012.

ADDRESSES: The public, Office of Management and Budget (OMB) and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001 or by facsimile at 202–307–0093.

FOR FURTHER INFORMATION CONTACT: Kristin Meinhardt, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: In an effort to carry out its national security and criminal law enforcement responsibilities, and to more robustly exchange with its partners, the FBI has created data warehouses to maintain information from its own investigative files (currently covered by and maintained in the Central Records System, Justice/FBI–002), public source information, and information lawfully ingested from other government agencies, such as the Departments of Defense, Energy, Homeland Security, State, and Treasury. Data sets ingested into a warehouse from other government agencies have been determined to be responsive to the FBI's missions and particular threats. This SORN will cover all FBI data warehouses, including the Data Mart maintained by the Foreign Terrorist Tracking Task Force (FTTTF), the Investigative Data Warehouse, and the Data Integration and Visualization System.

Data warehouses function as the point of receipt for incoming information and provide repositories where disparate data sets can be compared with each other and with FBI information to provide a more complete picture of potential national security threats or criminal activities. Maintaining the data in warehouses allows users to search across relevant government agency data sets and FBI case information at the same time rather than searching each data set individually. These data warehouses contain much of the same information; however, the FTTTF Data Mart is used primarily to address the FBI's national security mission, IDW facilitates analysis across the major FBI mission areas (and makes searching selected FBI case information easier) and DIVS provides an enhanced and integrated view of FBI information. Queries of the warehouses can yield results in a matter of minutes, which facilitates analysis and provides information for further examination. Query results are used to set leads for investigations and, in appropriate cases, to prepare analytical products for information sharing.

The extraction of useful information from multiple data sets is the kind of work FBI analysts conduct on a daily basis; being able to do this across multiple data sets maintained in the warehouses increases the speed and efficiency of this work which, in turn, contributes to the FBI's ability more readily and effectively to carry out its national security and law enforcement missions.

Because this system contains law enforcement information, the Attorney General is proposing to exempt this system from certain provisions of the Privacy Act, as permitted by law. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt this system.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on this new system of records.

Dated: June 19, 2012.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/FBI–022

SYSTEM NAME:

FBI Data Warehouse System.

SECURITY CLASSIFICATION:

Classified and/or unclassified information.

SYSTEM LOCATION:

Records may be maintained at all locations at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Bldg., 935 Pennsylvania Avenue NW., Washington, DC 20535–0001; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; FBI Records Management Division, 170 Marcel Drive, Winchester, VA 22602–4843; and FBI field offices, legal attaches, information technology centers, and other components as listed on the FBI's Internet Web site, *http://www.fbi.gov.* Some or all system information may also be duplicated at other locations where the FBI has granted direct access for support of FBI missions, for purposes of system backup, emergency preparedness, and/or continuity of operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: Individuals who are identified in data maintained in FBI files or obtained by the FBI by authority of law and agreement from other federal, state, local, tribal or foreign government agencies in furtherance of authorized information sharing purposes to carry out the FBI's mission to protect and defend the United States against terrorist and foreign intelligence threats and to enforce U.S. criminal laws. These individuals consist of the following: subjects, suspects, victims, witnesses, complainants, informants, sources, bystanders, law enforcement personnel, intelligence personnel, other responders, administrative personnel, consultants, relatives, and associates who may be relevant to the investigation or intelligence operation; individuals who are identified in open source information or commercial databases, or who are associated, related, or have a nexus to the FBI's missions; individuals whose information is collected and maintained for information system user auditing and security purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain investigative and/or intelligence information that has been replicated and/or extracted from other FBI systems; obtained from open source or commercial databases; and lawfully collected by the FBI or other government agencies such as the Departments of Defense, Energy, Homeland Security, State, and Treasury. These records include, but are not limited to, biographical information (such as name, alias, race, sex, date of birth, place of birth, social security number, passport number, driver's license, or other unique identifier, addresses, telephone numbers, physical descriptions, and photographs); biometric information (such as fingerprints); financial information (such as bank account number); location; associates and affiliations; employment and business information; visa and immigration information; travel; and criminal and investigative history, and other data that may assist the FBI in fulfilling its national security and law enforcement responsibilities. Records may also contain information collected and compiled to maintain an audit trail of the activity of authorized users of the system, such as user name and ID.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. Chapter 33; 18 U.S.C. 2332(b); 28 CFR 0.85; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act); the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA); the Implementing Recommendations of the 9/11 Commission Act of 2007; 42 U.S.C. 3771; the National Security Act of 1947, as amended; Section 603 of the Intelligence Authorization Act of 1990, the Attorney General's Guidelines for Domestic FBI Operations and numerous other statutes, executive orders, and presidential directives.

PURPOSE(S):

The purpose of the system is to facilitate the FBI's national security and law enforcement missions by

establishing centralized data warehouses for the compilation, fusion, storage, and comprehensive analysis of pertinent information that will allow the FBI to develop investigative leads, operational intelligence products and strategic intelligence assessments on new or evolving national security and criminal threats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), records or information in this system may be disclosed as a routine use under 5 U.S.C. 552a(b)(3) as noted below.

(a.) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, foreign, or international) where the FBI determines the information is relevant to the recipient entity's law enforcement responsibilities.

(b.) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—civil, criminal, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity, that is charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law.

(c.) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes when determined to be relevant by the FBI/DOJ.

(d.) To any person, organization, or governmental entity in order to notify them of a potential terrorist threat for the purpose of guarding against or responding to such threat.

(e.) To an agency of a foreign government or international agency or entity where the FBI determines that the information is relevant to the recipient's responsibilities, dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

(f.) To any non-governmental entity, including commercial entities, or nonprofit organizations, that are joint participants with or provide support to the FBI and disclosure is consistent with FBI's law enforcement, national security, or intelligence missions.

(g.) To any entity or individual where there is reason to believe the recipient is or could become the target of a particular criminal activity, conspiracy, or other threat, to the extent the information is relevant to the protection of life, health, or property. Information may similarly be disclosed to other recipients who have interests to which the threat may also be relevant, or who may be able to assist in protecting against or responding to the threat.

(h.) To persons or entities where there is a need for assistance in locating missing persons, and where there are reasonable grounds to conclude from available information that disclosure would further the best interests of the individual being sought.

(i.) To appropriate agencies, entities, and persons when (1) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(j.) To contractors, grantees, experts, consultants, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department of Justice, when necessary to accomplish an agency function related to this system of records.

(k.) To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the Department of Justice and, where applicable, consistent with 28 CFR 50.2. unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(l.) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(m.) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

(n.) To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

(o.) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

(p.) To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the Department and meeting related reporting requirements.

(q.) To the National Archives and Records Administration (NARA) for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(r.) To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(s.) To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-elect and Vice President-elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, e.g., disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may also be disclosed to the White House and, during Presidential

transitions, to the President-elect and Vice-President-elect and their designees, for Executive Branch coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President-elect, Vice-President or Vice-President-elect. System records or information may also be disclosed during a Presidential campaign to a major-party Presidential candidate, including the candidate's designees, to the extent the disclosure is reasonably related to a clearance request submitted by the candidate for the candidate's transition team members pursuant to Section 7601 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended.

(t.) To complainants and/or victims to the extent deemed necessary by the DOJ to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were a victim.

(u.) To appropriate officials and employees of a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(v.) To federal, state, local, tribal, territorial, foreign, or international licensing agencies or associations, when the Department determines the information is relevant to the suitability or eligibility of an individual for a license or permit.

(w.) To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant to the recipient agency's decision.

(x.) To such agencies, entities, and persons as the DOJ deems appropriate and relevant to ensure the continuity of government functions in the event of any actual or potential disruption of normal government operations. This use encompasses all manner of such situations in which government operations may be disrupted, including: Military, terrorist, cyber, or other attacks, natural or manmade disasters, and other national or local emergencies; inclement weather and other acts of nature; infrastructure/utility outages; failures, renovations, or maintenance of buildings or building systems; problems arising from planning, testing or other development efforts; and other operational interruptions. This also includes all related pre-event planning, preparation, backup/redundancy, training and exercises, and post-event operations, mitigation, and recovery.

(y.) To any person or entity, if deemed by the DOJ to be necessary to elicit information or cooperation from the recipient for use by the DOJ in the performance of an authorized law enforcement, national security, or intelligence function.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records are stored electronically on hard disk, removable storage devices or other digital media. Some information may be retained in hard copy format and stored in individual file folders and file cabinets with controlled access, and/or other appropriate GSA-approved security containers.

RETRIEVABILITY:

Information is retrieved by name or other identifying information. Some methods of retrieval will not identify an individual but only a set of circumstances that may lead to the identification of an individual.

SAFEGUARDS:

Records are maintained in secure, restricted areas and are accessed only by authorized personnel. Physical security protections include guarded and locked facilities requiring badges and passwords for access and other physical and technological safeguards (such as role-based access and strong passwords) to prevent unauthorized access. All visitors must be accompanied by authorized staff personnel at all times. Highly classified or sensitive privacy information is electronically transmitted on secure lines and in encrypted form to prevent interception and interpretation. Users accessing system components through mobile or portable computers or electronic devices such as laptop computers, multi-purpose cell phones, and personal digital assistants (PDAs) must comply with the FBI's remote access policy, which requires encryption. All FBI employees receive a complete background investigation prior to being hired. Other persons with authorized access to system records receive comparable vetting. All personnel are required to undergo privacy and annual information security training, and are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates DOJ regulations and may violate certain civil and criminal statutes providing for penalties of fine or imprisonment or both. As a condition of employment, FBI personnel also sign nondisclosure agreements which encompass both classified and unclassified information and remain in force even after FBI employment. Employees who resign or retire are also cautioned about divulging information acquired in their FBI jobs.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURE:

Same as ''RECORD ACCESS PROCEDURES,'' below.

RECORD ACCESS PROCEDURES:

The Attorney General has exempted this system of records from the notification, access, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's Web site at *http://foia.fbi.gov/requesting_records.html.* Individuals may mail, fax, or email a request, clearly marked ''Privacy Act Request,'' to the Federal Bureau of Investigation, Attn: FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; Fax: 540–868–4995/6/7; Email: (scanned

copy) *foiparequest@ic.fbi.gov.* The request should include a general description of the records sought and must include either a completed Department of Justice Certification of Identity Form, DOJ–361, which can be located at the above link, or a letter that has been notarized which includes: The requester's full name, current and complete address, and place and date of birth or be submitted under penalty of perjury of law pursuant to 28 U.S.C. 1746. In the initial request the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked ''Privacy Act Amendment Request'' and comply with 28 CFR 16.46 (Request for Amendment or Correction of Records). Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information provided by Federal, state, local, tribal, territorial, and foreign law enforcement agencies; agencies of the U.S. foreign intelligence community and military community; open sources, such as broadcast and print media, publicly-available and commercial data bases; and individuals, corporations, and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); and (g) of the Privacy Act. The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j) and/or (k). Rules are being promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**. In addition, the DOJ will continue in effect and assert all exemptions claimed under 5 U.S.C. 552a(j) or (k) (or other applicable authority) by an originating agency from which the DOJ obtains records, where one or more reasons underlying an original exemption remain valid. Where compliance with an exempted provision could not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the DOJ in its sole discretion may waive an exemption in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the DOJ in its sole discretion may impose any restrictions deemed advisable by the DOJ (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

[FR Doc. 2012–16823 Filed 7–9–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Pretrial Technical Assistance for Evidence-Based Decision Making in Local Criminal Justice Systems

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Community Services Division is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to 12 months beginning in September 2012. Work under this cooperative agreement is part of a larger NIC initiative, Evidence-Based Decision Making (EBDM) in Local Criminal Justice Systems. Work under this cooperative agreement will be coordinated with recipients of other cooperative agreements providing services under Phase III of this initiative.

Specifically, under this cooperative agreement, the awardee will provide technical assistance to seven Phase III sites that have already been identified. During Phase II of the EBDM planning, each of seven sites identified change strategies based on their individual system planning activities. These change strategies are critical to meeting their system's harm reduction goals.

The technical assistance from this award will be targeted toward expanding the knowledge and use of legal and evidence-based pretrial risk assessment and release practices among criminal justice stakeholders.

DATES: Applications must be received by 4 p.m. (E.D.T.) on Friday, July 20, 2012.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *www.nicic.gov/cooperativeagreements.*

All technical or programmatic questions concerning this announcement should be directed to Lori Eville, Correctional Program Specialist, National Institute of Corrections, at *leville@bop.gov.* In addition to direct reply, all questions and answers will be posted on the NIC Web site at *www.nicic.gov* for public review (the names of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12 p.m. (E.D.T.) on July 15, 2012 will be posted on the NIC Web site.

SUPPLEMENTARY INFORMATION: *Overview:* The overall goal of the EBDM Initiative is to establish and test the links (information tools and protocols) between local criminal justice decisions and the application of human and organizational change principles (evidence-based practices) in achieving measurable reductions in pretrial misconduct and post-conviction risk of reoffending. The unique focus of the initiative is the review of locally developed criminal justice strategies that guide practice within existing sentencing statutes and rules. The

initiative intends to (1) improve the quality of information that leads to making individual case decisions in local systems and (2) engage these systems as policymaking bodies to collectively improve the effectiveness and capacity of their decision making related to pretrial release/sentencing options. Local officials involved in the initiative include judges, prosecutors, public defenders, police, human service providers, county executives, and administrators of jail, probation, and pretrial services agencies.

Local criminal justice decisions are defined broadly to include dispositions regarding arrest, cite and release or to custody; pretrial release or detention and setting of bail and pretrial release conditions; pretrial diversion; charging and plea bargaining; sentencing of adjudicated offenders regarding use of community and custody options; and responses to violations of conditions of pretrial release and community sentences.

Background: In June 2008, the National Institute of Corrections (NIC) launched a multi-phased initiative and awarded a cooperative agreement to address evidence-based decision making in local criminal justice systems. The goal of Phase I of the initiative was to build a systemwide framework (from arrest through final disposition and discharge) that would result in more collaborative, evidence-based decision making and practices in local criminal justice systems. This effort was grounded in two decades of research on the factors that contribute to criminal reoffending and the methods a justice system can employ to interrupt the cycle of reoffense. Today, the initiative seeks to equip criminal justice policymakers in local communities with information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending.

The principle product of Phase I of this initiative was the Evidence-Based Decision Making Framework in Local Criminal Justice Systems. The Framework identifies the key structural elements of a system informed by evidence-based practice. It defines a vision of safer communities. It puts forward the belief that risk and harm reduction are fundamental goals of the justice system and that these can be achieved without sacrificing offender accountability or other important justice system outcomes.

The Framework both acknowledges the importance of the key premises and values underlying our criminal justice system and provides a set of principles to guide evidence-based decision making within that context; the principles themselves are evidence-based. The Framework also highlights the groundbreaking research that demonstrates pretrial misconduct and offender recidivism can be reduced. The Framework identifies the key stakeholders who must be actively engaged in a collaborative partnership if an evidence-based system of justice is to be achieved. It outlines some of the most difficult challenges agencies face as they seek to implement such an approach deliberately and systematically in their local communities. A copy of the Evidence-Based Decision Making Framework document can be downloaded online at *http://nicic.gov/Library/024372.*

In August 2010, NIC launched Phase II (Planning and Engagement) of the Evidence-Based Decision Making in Local Criminal Justice Systems Initiative by selecting seven jurisdictions to serve as EBDM seed sites. Those sites are Mesa County, Colorado; Grant County, Indiana; Ramsey County, Minnesota; Yamhill County, Oregon; City of Charlottesville/County of Albemarle, Virginia; Eau Claire County, Wisconsin; Milwaukee County, Wisconsin.

The cooperative agreement awardees of Phase II provided extensive technical assistance to each of the seven seed sites for a period of 10 months. The overarching purpose of the technical assistance was to (1) Develop a shared philosophy and vision for the local criminal justice system; (2) Determine the capacity to collect and analyze data, including the quality of the data, to support ongoing analysis of the effectiveness of current and future policies, practices, and services designed to achieve specific risk and harm reduction outcomes; and (3) Change in knowledge, skills, and abilities regarding research-based risk reduction strategies.

Each site received technical assistance that was specific to the initiative and individualized to its system's needs. Monthly site visits from an assigned technical assistance site coordinator led the jurisdictions through the attainment of specific activities and goals. The Roadmap to Phase II outlines the major objectives that the technical assistance providers guided the seeds sites through. A copy of the roadmap is available online at *http://static.nicic.gov/Public/roadmap_phase_ii_final_2.docx.*

The technical assistance was intended to lead to the following outcomes: Build a genuine, collaborative policy team; Build individual agencies that are collaborative and in a state of readiness for change; Understand current practice within each agency/across the system; Understand and have the capacity to implement evidence-based practices; Establish performance measurements/outcomes/system scorecard; Develop a system logic model; Engage/gain support of the community; and Develop a strategic action plan.

All seven sites completed Phase II in October 2011. Each jurisdiction submitted an application for acceptance into Phase III of the initiative. Within their applications are a detailed strategic action plan and their system's logic model. The action plan and logic model are the foundation of implementation activities of the Phase III technical assistance.

Scope of Work: The intent of this request for proposal is to expand the knowledge and use of legal and evidence-based pretrial risk assessment and release practice among criminal justice stakeholders in their local jurisdiction. The cooperative agreement awardee will design and deliver technical assistance to seven specific EBDM sites: Grant County, IN; Yamhill County, OR; Charlottesville, VA; and Ramsey County, MN; Mesa County, CO; Milwaukee County, WI; and Eau Claire County, WI.

The technical assistance will be guided by each site's strategic action plan, logic model, and other specialized assistance required to reach the jurisdiction's identified outcomes. The applicant should demonstrate a strong background in working with criminal justice stakeholders in the topics of legal and evidence-based practices in pretrial release. The applicant will draw from existing research and legal principles related specifically to pretrial detention and release. The final training products may be used in future NIC trainings with similar audiences.

Project Deliverables: (1) Develop a training curriculum and provide evidence-based pretrial release training and tools to each of the assigned EBDM technical assistance site coordinators. (2) Complete pretrial program assessment, including jail population analysis, if determined necessary at each site. (3) Develop training curriculum and provide training targeted to judges, prosecutors and defense attorneys who focus on the legal foundations of pretrial release and evidence-based pretrial practices. (4) Provide training and strategic planning with criminal justice stakeholders to increase their use of non-financial pretrial release based on actuarial pretrial risk assessment. Risk assessment should be based on factors known to increase the probability of selecting those pretrial defendants who

show the lowest risk of pretrial misconduct.

Meetings: The cooperative agreement awardee will participate in an initial meeting with NIC staff for a project overview and preliminary planning meeting within 2 weeks of the award. The awardee will meet with NIC staff routinely to discuss the activities noted in the timeline during the course of the cooperative agreement. Meetings will be held no less than quarterly and may be conducted via webinar or in person as agreed upon by NIC and the awardee. Application Requirements: Applications should be concisely written, typed, double-spaced, no more than 30 pages, and reference the project by the ''NIC Opportunity Number'' and Title in this announcement. The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a program narrative in response to the statement of work, and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/general/certif-frm.pdf*.).

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: Up to $125,000 is available for this project, subject to available funding, but preference will be given to applicants who provide the most cost efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the government, not necessarily the lowest bid. Funds may be used only for the activities that are directly related to the project.

This project will be a collaborative venture with the NIC Community Services Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Required Expertise: Successful applicants must be able to demonstrate that they have the organizational capacity to carry out the deliverables of this project. Appropriate expertise may include extensive experience in correctional and criminal justice policy and practice, and a strong background in criminal justice systemwide change with expertise in the implementation of evidence-based practices in pretrial release without an over reliance on financial release conditions.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows:

Program Narrative: (50%).

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational Capabilities: (25%).

Do the skills, knowledge, and expertise of the applicant(s) and the proposed project staff demonstrate a high level of competency to complete the tasks? Does the applicant have the necessary experience and organizational capacity to complete the goals of the project?

Program Management/Administration: (25%).

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If there are consultants and/or partnerships proposed, is there a clear structure to ensure effective utilization and coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site at *http://www.ccr.gov.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 12CS10. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.603.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. E.O. 12372 allows states the option of setting up a system for reviewing applications from within their states for assistance under certain federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC), a list of which is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2012–16786 Filed 7–9–12; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,314]

Northwest Hardwoods, Inc., Including On-Site Leased Workers of Manpower, Tacoma, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 9, 2012, a representative of the Washington State Labor Council, Olympia, Washington, requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Northwest Hardwoods, Inc., Tacoma, Washington (subject firm). The determination was issued on May 4, 2012. The subject firm produces alder lumber.

The initial investigation resulted in a negative determination based on the findings that there was no shift in production and there were no imports of like or directly competitive articles by the subject firm or customers. The initial investigation also revealed that the subject firm is not a supplier to, or act as a downstream producer for, an eligible firm that employed a worker group eligible to apply for TAA.

The representative of the Washington State Labor Council requests that the Department look into further detail whether or not the subject firm is a supplier to a TAA-certified firm

(Kimberly Clark; TA–W–81,097). Specifically, the representative stated that the subject firm supplied component parts, chips and hog fuel (bark and unusable contaminated chips), to Kimberly Clark.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of June, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16737 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,313]

Wyatt VI, Inc., A Division of Wyatt Field Service Company, Working On-Site at Hovensa Oil Refinery, Christiansted, St. Croix, VI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 18, 2012, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Wyatt VI, Inc., a division of Wyatt Field Service Company, working on-site at Hovensa Oil Refinery, Christiansted, St. Croix, Virgin Islands (subject firm). The determination was issued on April 6, 2012, and the Department's Notice of determination was published in the **Federal Register** on April 19 (77 FR 23511). The workers' firm supplies maintenance services for the petrochemical industry.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift the supply of maintenance services to a foreign country, nor did the subject firm or its customers increase reliance on imported maintenance services.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of June, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16738 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,122]

Honeywell International, Scanning and Mobility Division, Formerly Known as Hand Held Products, Inc., Including On-Site Leased Workers From Manpower, Skaneatelles Falls, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 25, 2011, applicable to workers of Honeywell International, Scanning and Mobility Division, including on-site leased workers from Manpower, Skaneateles Falls, New York. The Department's notice of determination was published in the **Federal Register** on June 17, 2011 (Vol. 76 FR 117).

At the request of the state workforce office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of barcode scanners.

The review shows that on May 25, 2011, a certification of eligibility to apply for adjustment assistance was issued for all workers of Honeywell International, Scanning and Mobility Division, formerly known as Hand Held Products, Inc., including on-site leased workers from Manpower, Skaneateles Falls, New York, separated from employment on or after September 23, 2010 through May 25, 2013. The notice was published in the **Federal Register** on June 17, 2011 (Vol. 76 FR 117).

In order to ensure that the worker group is properly identified, the certification is being amended to include the former name of the legal entity under which the workers' wages were also being reported.

The amended notice applicable to TA–W–80,122 is hereby issued as follows:

All workers of Honeywell International, Scanning and Mobility Division, formerly known as Hand Held Products, Inc., including on-site leased workers from Manpower, Skaneateles Falls, New York, who became totally or partially separated from employment on or after September 23, 2010, through May 25, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of June, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16740 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,206]

Smurfit-Stone Container Corporation, Containerboard Mill, Including On-Site Leased Workers From KMW Enterprises and General Security Systems Corporation Ontonagon, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 6, 2010, applicable to workers of Smurfit-Stone Container Corporation, Containerboard Mill, Ontonagon, Michigan including on-site leased workers from KMW Enterprises and General Security Systems Corporation, Ontonagon, Michigan. The Department's notice of determination was published in the **Federal Register** on May 28, 2010 (75 FR 30070).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the

production of corrugated medium, which is used in the production of corrugated containers (cardboard boxes).

The company reports that workers leased from General Security System Corporation were employed on-site at the Ontonagon, Michigan location of Smurfit-Stone Container Corporation, Containerboard Mill, Ontonagon, Michigan. The Department has determined that these workers were sufficiently under the control of Smurfit-Stone Container Corporation, Containerboard Mill, Ontonagon, Michigan to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from General Security System Corporation working on-site at the Ontonagon, Michigan location of Smurfit-Stone Container Corporation, Containerboard Mill.

The amended notice applicable to TA–W–73,206 is hereby issued as follows:

All workers of Smufit-Stone Container Corporation, Containerboard Mill, including on-site leased workers from KMW Enterprises and General Security System Corporation, Ontonagon, Michigan, who became totally or partially separated from employment on or after December 18, 2008, through May 6, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of June 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16739 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,298]

Syniverse Technologies, Inc., Including On-Site Leased Workers From Insight Global Stone Staffing, and Randstad Formerly Known as Sapphire Technologies, Watertown, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 4, 2012, applicable to workers of Syniverse Technologies, Inc., Watertown, Massachusetts, including on-site leased workers from Insight Global, Stone Staffing, Randstad formerly known as Sapphire Technologies, Watertown, Massachusetts. The Department's notice of determination was published in the **Federal Register** on Thursday, April 19, 2012 (Vol. 77, No. 76 FR 23510).

At the request of State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the supply of telecommunication services.

The company reports that workers leased from Insight Global, Stone Staffing, Randstad, formerly known as Sapphire Technologies, were employed on-site at the Watertown, Massachusetts location of Syniverse Technologies, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Insight Global, Stone Staffing, Randstad, formerly known as Sapphire Technologies, working on-site at the Watertown, Massachusetts location of Syniverse Technologies, Inc.

The amended notice applicable to TA–W–81,298 is hereby issued as follows:

All workers of Insight Global, Stone Staffing, Randstad formerly known as Sapphire Technologies, reporting to Syniverse Technologies, Inc., Watertown, Massachusetts, who became totally or partially separated from employment on or after February 6, 2011, through April 4, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 28th day of June, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16742 Filed 7–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,111A]

Alternative Staffing, Formerly Known as First Choice Staffing, Working On-Site at Ametek Nationals Controls Corporation, Instrumentation and Speciality Controls Division, West Chicago, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 14, 2011, First Choice Staffing working on-site at Ametek Nationals Controls Corporation, Instrumentation and Specialty Control Division, West Chicago, Illinois. The Department's notice of determination was published in the **Federal Register** on December 21, 2011 (Vol. 76, No. 245, FR 79221).

At the request of the state workforce official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of foodservice OEM (Original Equipment Manager) controls and stand-alone timers, industrial process controls, controls for industrial air filters, and controls for environmental dust collectors.

The review shows that on December 14, 2011, a certification of eligibility to apply for adjustment assistance was issued for all workers of Alternative Staffing formerly known as First Choice Staffung working on-site at Ametek Nationals Controls Corporation, Instrumentation and Specialty Control Division, West Chicago, Illinois, separated from employment on or after February 13, 2010 through December 14, 2013. The notice was published in the **Federal Register** on December 21, 2011 (Vol. 76, No. 245, FR 79221).

New information shows that the leasing agency formerly known as First Choice Staffing currently operates under a new name, Alternative Staffing. Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–81,111A is hereby issued as follows:

All workers of Alternate Staffing, formerly known as First Choice Staffing working on-site at Ametek Nationals Controls Corporation, Instrumentation and Specialty Control Division, West Chicago, Illinois, who became totally or partially separated from

employment on or after December 14, 2010, through December 14, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of June, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16741 Filed 7–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,081]

General Motors Vehicle Manufacturing Formerly Known as General Motors Corporation Shreveport Assembly Plant Including On-Site Leased Workers From Aerotek, Kelly Services and Voith Industrial Services, Inc., Formerly Known as Premier Manufacturing Support Services Shreveport Ramp Services, LLC, Dana Holding Corp., the Landing of GM, Filtration Services Group, LLC, BASF, G4S Secure Coalition, Seibert Powder Coating, and Advantis Occupational HealthShreveport, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 2010, applicable to workers of General Motors Vehicle Manufacturing, formerly known as General Motors Corporation, Shreveport Assembly Plant, including on-site leased workers from Aerotek and Kelly Services, Shreveport, Louisiana. The workers are engaged in the production of the Chevrolet Colorado, GMC Canyon and Hummer H–3 and H–3T vehicles. The notice was published in the **Federal Register** on August 13, 2010 (75 FR 49530). The notice was amended on April 4, 2011 and January 31, 2012 to include on-site leased workers from Voith Industrial Service, Inc., formerly known as Premier Manufacturing Support Services and Shreveport Ramp Services, LLC. The amended notices were published in the **Federal Register** on April 14, 2011 (76 FR 21035) and February 8, 2012 (77 FR 6587), respectively.

At the request of Louisiana State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Dana Holding Corp., The Landing of GM, Filtration Services Group, LLC, BASF, G4S Secure Coalition, Seibert Powder Coating and Advantis Occupational Health were employed on-site at the Shreveport, Louisiana location of General Motors Vehicle Manufacturing, formerly known as General Motors Corporation, Shreveport Assembly Plant. The Department has determined that these workers were sufficiently under the control of General Motors Vehicle Manufacturing, formerly known as General Motors Corporation, Shreveport Assembly Plant to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working on-site at the Shreveport, Louisiana location of General Motors Vehicle Manufacturing, formerly known as General Motors Corporation, Shreveport Assembly Plant.

The amended notice applicable to TA–W–74,081 is hereby issued as follows:

All workers of General Motors Vehicle Manufacturing, formerly known as General Motors Corporation, Shreveport Assembly Plant, including on-site leased workers from Aerotek, Kelly Services and Voith Industrial Services, Inc., formerly known as Premier Manufacturing Support Services, Shreveport Ramp Services, LLC, Dana Holding Corp., The Landing of GM, Filtration Services Group, LLC, BASF, G4S Secure Coalition, Seibert Powder Coating and Advantis Occupational Health, Shreveport, Louisiana, who became totally or partially separated from employment on or after August 28, 2010, through July 27, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of June 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16743 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *June 18, 2012 through June 22, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,310	Sanmina—SCI, On-site leased workers from Kelly Temporary Services.	Owego, NY	February 6, 2011.
81,535	Cardinal FG Company, Cardinal Glass Industries, Express Employment Professionals, etc..	Chehalis, WA	April 25, 2011,
81,634	Cardinal ST Company, Cardinal Glass Industries	Mazomanie, WI	May 17, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,247	Quad/Graphics, Inc., Kelly Services	Dickson, TN	January 17, 2011.
81,423	Sony Electronics, Inc., Home, Service, Sony Supply Chain Solutions, Selectremedy, Staffmark, etc.	San Diego, CA	April 28, 2012.
81,423A	Sony Electronics, Inc., Component Solutions Business, etc., Selectremedy, Staffmark, etc.	San Jose, CA	April 28, 2012.
81,423B	Sony Electronics, Inc., Design Center, Selectremedy, Staffmark and Payrolling.Com.	Santa Monica, CA	March 15, 2011.
81,423C	Sony Electronics, Inc., Service Divison, Selectremedy, Staffmark and Payrolling.Com.	Fort Myers, FL	April 28, 2012.

TA–W No.	Subject firm	Location	Impact date
81,423D	Sony Electronics, Inc., Convergent Media Systems Division	Alpharetta, GA	March 15, 2011.
81,423E	Sony Electronics, Inc., Sales Operations	Itasca, IL	April 28, 2012.
81,423F	Sony Electronics, Inc., Corporate Security and Media, etc., Selectremedy, Staffmark, etc.	Park Ridge, NJ	April 28, 2012.
81,423G	Sony Electronics, Inc., Service Division, Sony Field Operations	Cranston, RI	March 15, 2011.
81,480	Convergys Corporation	Ogden, UT	April 4, 2011.
81,482	Quad/Graphics, Inc.	Jonesboro, AR	April 5, 2011.
81,484	Iowa Health System Des Moines, Health Information Management Department, Iowa Health Systems.	Des Moines, IA	April 6, 2011.
81,503	Honeywell International, Sensing & Control Division, Manpower, Pembroke Pines and Cortech.	Acton, MA	April 12, 2011.
81,557	TE Connectivity, Industrial Division	Middletown, PA	April 27, 2011.
81,564	CenturyLink, Inc., Quality Assurance Team, Century/Tel Service Group.	Shreveport, LA	April 25, 2011.
81,564A	CenturyLink, Inc., Quality Assurance Team, Century/Tel Service Group.	Monroe, LA	April 25, 2011.
81,564B	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	Denver, CO	April 25, 2011.
81,564C	CenturyLink, Inc., Quality Assurance Team, Embarq Management Company.	Altamonte Springs, FL	April 25, 2011.
81,564D	CenturyLink, Inc., Quality Assurance Team, Embarq Management Company.	Tarboro, NC	April 25, 2011.
81,564E	CenturyLink, Inc., Quality Assurance Team, Embarq Management Company.	Medford, OR	April 25, 2011.
81,564F	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	De Moines, IA	April 25, 2011.
81,564G	CenturyLink, Inc., Quality Assurance Team, Embarq Management Company.	Jefferson City, MO	April 25, 2011.
81,564H	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	Waterloo, IA	April 25, 2011.
81,564I	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	Colorado Springs, CO	April 25, 2011.
81,564J	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	Seattle, WA	April 25, 2011.
81,564K	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation, Workers Working Remotely in SC.	Idaho Falls, ID	April 25, 2011.
81,564L	CenturyLink, Inc., Quality Assurance Team, Qwest Corporation	Minneapolis, MN	April 25, 2011.
81,569	Elsevier, Inc., Global Book Production Department	Waltham, MA	May 3, 2011.
81,576	State Street Corporation, Putnam Cash Reconciliations Team	Quincy, MA	April 26, 2011.
81,603	Accellent, Aerotek, Corporate Management Group (CMG) and Marathon.	Englewood, CO	May 10, 2011.
81,621	Cooper Bussmann/Sure Power Industries, Leased workers from Aerotek & UI Wages through Sure Power Indus.	Tualatin, OR	May 15, 2011.
81,639	Springs Global U.S., Inc.	Fort Mill, SC	June 17, 2012.
81,639A	Springs Global U.S., Inc.	New York, NY	June 17, 2012.
81,639B	Springs Global U.S., Inc.	Bentonville, AR	June 17, 2012.
81,639C	Springs Global U.S., Inc.	Minneapolis, MN	June 17, 2012.
81,639D	Springs Global U.S., Inc.	Plano, TX	June 17, 2012.
81,665	Strategic Resource Company (SRC), Aetna Health Holdings, Inc. & Aetna, Inc. Procurestaff LTD.	Columbia, SC	May 30, 2011.
81,666	Goodrich Landing Gear, Goodrich Aerospace, Marble Division	Cleveland, OH	July 29, 2012.
81,666A	Lease Workers from Adecco, Verify and Global Partner Solutions, Inc., Goodrich Landing Gear, Goodrich Aerospace, Marble Division.	Cleveland, OH	May 2, 2011.
81,672	WellPoint, Inc., Enrollment and Billing East Div, Wellpoint Working at Home from NY and NJ.	Albany, NY	May 31, 2011.
81,672A	WellPoint, Inc., Enrollment and Billing East Divison	Melville, NY	May 31, 2011.
81,672B	WellPoint, Inc., Enrollment and Billing East Divison	Middletown, NY	May 31, 2011.
81,672C	WellPoint, Inc., Enrollment and Billing East Divison, Wellpoint Working from AL and GA.	Atlanta, GA	May 31, 2011.
81,672D	WellPoint, Inc., Enrollment and Billing East Divison	Columbus, GA	May 31, 2011.
81,672E	WellPoint, Inc., Enrollment and Billing East Divison, Wellpoint Working at Home from Virginia.	Richmond, VA	May 31, 2011.
81,672F	WellPoint, Inc., Enrollment and Billing East Div, Wellpoint Working at Home from Virginia.	Virginia Beach, VA	May 31, 2011.
81,677	Konstant Products, Inc., Quincy Manufacturing Plant, Konstant Products Holding, Econorack Group.	Quincy, IL	June 1, 2011.
81,714	G&K Services, Adecco	Laurel, MS	June 12, 2011.
81,714A	G&K Services	Richton, MS	June 12, 2011.
81,714B	G&K Services	Greensboro, NC	June 12, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,625	Fuel Total Systems, California Corporation, FTS Co., Ltd., Manpower Staffing, Select Staffing, etc..	Lathrop, CA	May 15, 2012.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,542	Silver City Aluminum Corporation	Taunton, MA	May 19, 2010.
81,619	Keymark Corporation of Florida, Inc., Keymark Ventures, Inc.	Lakeland, FL	May 19, 2010.
81,623	Hydro Aluminum North America, Inc., Saint Augustine Divison, Aerotek and Robert Half International.	Saint Augustine, FL	May 19, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
81,593	Bank of America, N.A., Bank of America, Principal & Interest Fixed Income Reconciliations Division.	Jacksonville, FL	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,575	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in NJ.	East Brunswick, NJ	
81,575A	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in IL.	Oakbrook Terrace, IL	
81,575B	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in CA.	Mountain View, CA	
81,575C	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in GA.	Atlanta, GA	
81,575D	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in WA.	Bellvue, WA	
81,575E	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in TX.	Addison, TX	
81,575F	Wipro Limited, Wipro Technologies, Alliance Managers, Workers Working Remotely in MA.	Boston, MA	
81,592	Dixie Consumer Products LLC, Georgia-Pacific Consumer Products Holdings LLC.	Parchment, MI	
81,609	AAA Northern California, Nevada & Utah, Auto Guardian Emergency Road Service, fka AAA Northern California, etc..	Hayward, CA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
81,662	Dalphis America, LLC	Memphis, TN	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
81,670	ABM Janitorial Services, Northeast, Inc.	East Syracuse, NY	

I hereby certify that the aforementioned determinations were issued during the period of *June 18, 2012 through June 22, 2012.* These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: June 28, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16744 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 20, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC, 20210.

Signed at Washington, DC, this 27th day of June 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

15 TAA petitions instituted between 6/18/12 and 6/22/12

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81728	Tellabs (State/One-Stop)	Petaluma, CA	06/18/12	06/14/12
81729	Crawford & Company (Workers)	Tucker, GA	06/18/12	06/14/12
81730	Market Track, LLC (State/One-Stop)	Chicago, IL	06/18/12	06/15/12
81731	Talgo, Inc. (Union)	Milwaukee, WI	06/19/12	06/18/12
81732	JCIM, US–LLC (Union)	Kendallville, IN	06/19/12	06/15/12
81733	Air System Components (State/One-Stop)	El Paso, TX	06/20/12	06/13/12
81734	Ericsson, Inc. (Workers)	Albuquerque, NM	06/21/12	06/20/12
81735	International Textile Group/Carlisle Finishing, LLC (Company).	Carlisle, SC	06/21/12	06/19/12
81736	Sandberg and Sikorski Corporate (Workers)	New York, NY	06/21/12	05/31/12
81737	Alorica, Inc. (Workers)	Palatka, FL	06/21/12	06/20/12
81738	Crystal Technology, LLC (State/One-Stop)	Palo Alto, CA	06/21/12	06/20/12
81739	Hewlett-Packard Company (State/One-Stop)	Corvallis, OR	06/21/12	06/20/12
81740	Graham Packaging Company (State/One-Stop)	Vandalia, IL	06/21/12	06/20/12
81741	IBM (State/One-Stop)	Tulsa, OK	06/21/12	06/20/12
81742	ConAgra Foods, Inc. (Company)	Omaha, NE	06/22/12	06/21/12

[FR Doc. 2012–16745 Filed 7–9–12; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,511]

Specialty Bar Products Company; A Subsidiary of Doncasters, Inc., Blairsville, PA; Notice of Negative Determination on Reconsideration

On January 25, 2012, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Specialty Bar Products Company, a subsidiary of Doncasters, Inc., Blairsville, Pennsylvania (subject firm). The Department's Notice was published in the **Federal Register** on February 8, 2012 (77 FR 6584). Workers at the subject firm are engaged in activities related to the production of pins, bushings, and gun blanks.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift the production of pins, bushings, or gun blanks (or like or directly competitive articles) to a foreign country or acquire the production of such articles from a foreign country. The investigation also revealed that neither the subject firm nor its customers imported articles like or directly competitive with those produced by the subject firm.

The initial investigation also revealed that with respect to Section 222(b)(2) of the Act, the subject firm is neither a Supplier nor Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

The request for reconsideration stated that the subject firm is owned by a company located in the United Kingdom, the subject firm ''provided products to international companies such as William Cook Defense, Sheffield England'' and due to ''the international corporate company in the United Kingdom, a significant decrease in production orders resulted in reduction of work force within Specialty Bar Products.''

Information obtained during the reconsideration investigation confirmed that the subject workers are engaged in activities related to the production of pins, bushings, and shotgun blanks, and clarified that the subject firm does not produce firearms, vehicles, or equipment that utilizes these articles.

Information obtained during the reconsideration investigation also confirmed that the subject firm is owned by Doncasters Group Ltd in Centrum, United Kingdom.

The reconsideration investigation also confirmed that the subject firm did not shift the production of pins, bushings, or shotgun blanks (or like or directly competitive articles) to a foreign country or acquire the production of such articles from a foreign country.

During the reconsideration investigation, the Department obtained information which reflects that while William Cook Defense is a customer, it was not a major declining customer. The customer surveyed during the initial investigation constituted a significant majority of the subject firm's sales declines.

During the reconsideration, the Department confirmed that neither the subject firm nor its major declining customer imported articles like or directly competitive with those produced by the subject firm. Specifically, the Department surveyed the subject firm's major declining customer in regard to imports of pins, bushings, and shotgun blanks (or like or directly competitive articles). The investigation revealed no such imports.

The investigation also revealed that with respect to Section 222(b)(2) of the Act, the subject firm is neither a Supplier nor Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

Based on a careful review of information obtained during the initial and reconsideration investigations, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, deny the petition for group eligibility Specialty Bar Products Company, a subsidiary of Doncasters, Inc., Blairsville, Pennsylvania, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC, on this 26th day of June, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16735 Filed 7–9–12; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,047, TA–W–81,047A]

ERA Systems, LLC, Formerly ERA Systems Corporation, a Subsidiary of Systems Research and Applications Corporation, 6647 Old Thompson Road, Syracuse, NY; ERA Systems, LLC, Formerly ERA Systems Corporation, a Subsidiary of Systems Research and Applications Corporation, 6712 Brooklawn Parkway, Suite 106, Syracuse, NY; Notice of Revised Determination on Reconsideration

The initial investigation, initiated on November 2, 2011, resulted in a negative determination, issued on January 13, 2012. The determination was applicable to workers and former workers of Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, Syracuse, New York. The notice of the Affirmative Determination Regarding the Application for Reconsideration was published in the **Federal Register** on February 28, 2012 (77 FR 12080).

During the reconsideration investigation, the Department clarified the worker group. Specifically, the Department determined that the subject worker group consists of workers and former workers of Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6647 Old Thompson Road, Syracuse, New York (TA–W–81,047) and Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6712 Brooklawn Parkway, Suite 106, Syracuse, New York (TA–W–81,047A). Both locations are engaged in activities related to the supply of research and development services for air traffic components and software used for tracking and transmitting flight-related data.

To support the request for reconsideration, the petitioner supplied additional information regarding a possible shift to/acquisition from a foreign country by the subject firm in the supply of like or directly competitive services.

Based on information provided during the reconsideration investigation, the Department determines that worker separations at the subject firm are related to a shift in the supply of research and development services (or like or directly competitive services) to a foreign country and that the shift in the supply of research and development services (or like or directly competitive services) contributed importantly to the worker separations at both 6647 Old Thompson Road, Syracuse, New York and 6712 Brooklawn Parkway, Suite 106, Syracuse, New York locations.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6647 Old Thompson Road, Syracuse, New York (TA–W–81,047) and Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6712 Brooklawn Parkway, Suite 106, Syracuse, New York (TA–W–81,047A), who were engaged in employment related to the supply of research and development services for air traffic components and software used for tracking and transmitting flight-related data, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6647 Old Thompson Road, Syracuse, New York (TA–W–81,047) and Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, 6712 Brooklawn Parkway, Suite 106, Syracuse, New York (TA–W–81,047A) who became totally or partially separated from employment on or after February 13, 2010, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of June, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–16736 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 10, 2012.

ADDRESSES: Ms Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–2447, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* This information collection is used by OWCP examiners to ascertain the financial condition of the beneficiary to determine if the overpayment or any part can be recovered; to identify the possible concealment or improper transfer of assets; and to identify and consider present and potential income and current assets for enforced collection proceedings. The questionnaire provides a means for the beneficiary to explain why he/she is without fault in an overpayment matter. If this information were not collected BLBA, EEOICPA and FECA would have little basis to determine appropriate collection proceedings. This information collection is currently approved for use through November 30, 2012.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this currently approved information collection in order to determine whether or not the recovery of any Black Lung Benefits Act (BLBA), Energy Employees Occupational Illness Compensation Program Act (EEOICPA) or Federal Employees' Compensation Act (FECA) overpayment may be waived, compromised, terminated, or collected in full.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1240–0051.
Agency Number: OWCP–20.
Affected Public: Individuals and households.
Total Respondents: 3,088.
Total Responses: 3,088.
Time per Response: 1 hour.
Estimated Total Burden Hours: 3,088.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $1,482.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 3, 2012.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2012–16758 Filed 7–9–12; 8:45 am]

BILLING CODE 4510–CR–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on July 17, 2012. The meeting will commence at 11 a.m., Eastern Daylight Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold. From time to time, the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Discussion with Management regarding recommendation for LSC's fiscal year 2014 budget ''mark''
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON–CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 5, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–16874 Filed 7–6–12; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–056]

NASA Advisory Council; Technology and Innovation Committee; Meeting Amendment

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

Reference: Notice 12–054, published in the **Federal Register** on Thursday, June 28, 2012 (Vol. 77, No. 125, page 38678).

SUMMARY: This is an amendment of **Federal Register** Notice 12–054 published on June 28, 2012, to provide additional information. In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council (NAC).

DATES: Tuesday, July 24, 2012, 8:00 a.m. to 2:50 p.m. Local Time.

ADDRESSES: NASA Goddard Space Flight Center (GSFC), Building 8, Management Conference Center, 8800 Greenbelt Road, Greenbelt, Maryland 20771.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number (866) 804–6184, pass code 3472886, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 997 752 106, and the password is NACTI@724.

The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update.
—Status of NASA's Space Technology Program.
—Briefing and Review of NASA's Draft Strategic Space Technology Investment Plan.
—Update on NASA's Technology Transfer and Commercialization Efforts.
—Overview of Technology Activities at NASA Goddard Space Flight Center.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. All attendees will be requested to sign a register and to comply with NASA security requirements. Visitors must show a valid State or Federal issued picture ID, green card, or passport, before receiving an access badge to enter into GSFC and must state that they are attending the NAC's Technology and Innovation Committee meeting in Building 8. All U.S. citizens and green card holders desiring to attend must provide their full name, company affiliation (if applicable), and citizenship to Mike Green via email at *g.m.green@nasa.gov* or by telephone at (202) 358–4710 no later than close of business on July 16, 2012. Foreign Nationals must provide the following information: full name,

gender, date/place of birth; citizenship, home address, visa information (number, type, expiration date), passport information (number, country of issue, expiration date), employer/affiliation information (name of institution, title/position, address, country of employer, telephone, email address), and an electronically scanned or faxed copy of their passport and visa to Mike Green via email at *g.m.green@nasa.gov* or by fax at (202) 358–4078 no later than close of business on July 11, 2012. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will report to the GSFC Main Gate where they will be processed through security prior to entering GSFC. For security questions on the day of the meeting, please call Debbie Brasel at (301) 286–6876 or email *Deborah.A.Brasel@nasa.gov.*

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–16781 Filed 7–9–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Toward Innovative Spectrum-Sharing Technologies: Wireless Spectrum Research and Development Senior Steering Group (WSRD SSG) Workshop III

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Wendy Wigen at 703–292–4873 or *wigen@nitrd.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

DATES: July 24, 2012.

SUMMARY: Representatives from Federal research agencies, private industry, and academia will build on the outcomes of Workshop I and Workshop II by identifying realistic projects whose implementation will significantly support the plan to meet the Presidential Memorandum's goals.

SUPPLEMENTARY INFORMATION: *Overview:* This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. Agencies of the NITRD Program are holding the third in a series of workshops to bring together experts from private industry and academia to help ''create and implement a plan to facilitate research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies, including those that are secure and resilient.'' The workshop will take place on July 24, 2012 from 8:15 a.m. to 5 p.m. MT in Boulder, Colorado at the *Millennium Harvest House Boulder,* 1325 Twenty-Eighth Street, 80302–6899. This event will be webcast. The event agenda and information about the webcast will be available the week of the event at: *http://www.nitrd.gov/Subcommittee/wirelessspectrumrd.aspx.*

Background: The *Presidential Memorandum on Unleashing the Wireless Broadband Revolution,* released on June 28, 2010, directed the federal agencies to create and implement a plan that ''facilitates research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies.''

The WSRD has held two workshops that addressed the challenge defined in that Presidential Memorandum and which included input from the academic and industry sectors. During WSRD's first Workshop held at Boulder, CO, on July 26, 2011, the participants indicated that a national-level testing environment is critical for validating spectrum sharing technology under realistic conditions; they also emphasized the value of a spectrum sharing testing environment for a diversity of users. At a second workshop, held in Berkeley, CA, in January, 2012, key concepts and criteria were established for spectrum sharing test and evaluation capabilities.

This third workshop will build on the progress we have made by identifying realistic projects whose implementation will significantly support the plan to meet the Presidential Memorandum's goals. This workshop will gather diverse, knowledgeable, and forward thinking stakeholders to advise us on this important step forward.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on July 5, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–16804 Filed 7–9–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0161]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (Commission or the NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 14 to June 27, 2012. The last biweekly notice was published on June 26, 2012 (77 FR 38094–38099).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0161. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0161. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0161 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0161.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0161 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of

which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting

the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *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's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 22, 2012.

Description of amendment request: The proposed amendments would allow the use of the nuclear service water system (NSWS) pump discharge crossover valves and associated piping to cross tie McGuire Nuclear Station, Units 1 and 2 (McGuire 1 and 2) NSWS trains to mitigate a Loss of Service Water (LOSW) event at McGuire 1 or 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

MNS' [McGuire Nuclear Station's] Final Safety Analysis Report (FSAR) conforms to the standard format and content of Revision 1 to Regulatory Guide (RG) 1.70 with exceptions described in the applicable sections of the FSAR. With regard to Chapter 15 ''Accident Analysis,'' MNS committed to analyzing the anticipated operational occurrences and postulated design basis accidents listed in Chapter 15 on pages 15T–1, 15T–2, and 15T–3 of RG 1.70 Revision 1. MNS' FSAR Chapter 15 described an exception to a Loss of Service Water event (RG 1.70, Rev. 1, page 15T–3, item 30) and stated, in part, ''Loss of the Nuclear Service Water System is not considered a credible accident because of the redundancy provided in the system.'' The FSAR was later updated (UFSAR) to conform to Chapter 15 accidents listed on pages 15–10, 15–11, and 15–12 of RG 1.70 Revision 3. The initial FSAR Chapter 15 exception to RG 1.70 Rev. 1 LOSW event was no longer required since LOSW events were no longer included in Chapter 15 of subsequent RG 1.70 revisions (revision 2 or 3). Based on the licensing history, the LOSW event is not an anticipated operational occurrence or postulated design basis accident and was not previously analyzed in Chapter 15 of the UFSAR. A failure of the NSWS does not initiate any of the accidents previously evaluated in Chapter 15 of the UFSAR; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2:

Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

McGuire [Nuclear Station] is a multi-unit site comprised of two nuclear stations, Unit 1 and Unit 2. Each unit has two NSWS trains and each train is designed to remove core decay heat following a design basis LOCA. Each train has a service water pump discharge crossover valve installed which allows the trains to be cross-connected in any combination. The NSWS pump discharge crossover valves are described in the UFSAR as providing operational flexibility. Although designed to cross-connect unit NSWS trains, MNS has never licensed their use. The proposed change, consistent with the UFSAR description and [Generic Letter] GL 91–13, will provide the operational flexibility to allow one unit's NSWS to be aligned to another unit that has lost all service water.

During normal operation, only one pump, per unit, is in operation to supply NSWS flow to the essential and non-essential headers for each unit. Cross-connecting NSWS between units will require a unit's standby NSWS pump to be placed in service (operating), opening its respective discharge crossover valve, and opening a LOSW unit's NSWS pump discharge crossover valve to establish service water flow to a LOSW unit's NSWS train. With exception to the flow path, the shared train is operated as designed. If the proposed [license amendment request] LAR is approved, the necessary site procedures will be revised to govern system operation and use of the crossover design feature to mitigate a LOSW event.

The use of the NSWS pump discharge crossover valves within their design limitations and maintaining compliance to [technical specification] TS 3.7.7 [limiting condition for operation] LCO does not create any credible new failure mechanisms, malfunctions, or accident initiators that will prevent the ability of the NSWS to perform its design function. Operating the NSWS within the allowances of TS 3.7.7, which allow a train to be removed from service for up to 72 hours, does not impact the redundant capabilities afforded by the other train or the ''low probability of a design basis accident (DBA) occurring during this time period'' as stated in TS 3.7.7 Bases. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be impacted by the proposed change. The use of a NSWS pump discharge cross-over to cross-tie units is not a credited flow path in design basis and is not needed to perform the specified safety function. Cross-connecting the units is an additional strategy made available if a total LOSW should occur.

The proposed change will allow a unit to share a portion of an available service water train's capacity with a unit that has lost all service water. The shared alignment requires the use of service water pump discharge crossover valves which are not designated as shared components. Their use will improve the availability of service water and decreases the probability of core damage. Therefore the change will improve the margin of safety for each unit with respect to mitigating LOSW events.

Placing a NSWS train in a shared alignment prevents the train from automatically performing its safety function and the train does not comply with GDC–5 [10 CFR Part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 5, ''Sharing of structures, systems, and components''] and is declared inoperable. Limiting the time a train is inoperable to 72 hours manages the

vulnerability to single failure consistent with current TS required actions and completion times. In accordance with TS LCO 3.0.2 allowances, TS 3.7.7 allows one train to be removed from service for up to 72 hours to perform surveillance testing, preventive maintenance, corrective maintenance, modifications, or investigation of operational problems. Although a NSWS train is declared inoperable for these activities, several can be accomplished while maintaining the train available while others, such as corrective maintenance, may also render the NSWS train unavailable. The 72 hour [completion time] CT is bounded by the worst case allowed by TS LCO 3.0.2 which assumes a train is both inoperable and unavailable.

Sharing a unit's redundant [nuclear service water] NSW pump requires the shared unit's service water pump to be taken out of standby and placed in service (operating). Therefore, the shared train remains available to the shared unit in event it must be restored. The shared train will be supplying the service water necessary to support operation of the shared unit's diesel generator (emergency power) and to assure long term operation of the shared pump. Although redundancy is lost in terms of performing its specified safety function on the designated unit, availability and functionality is maintained by the proposed amendment.

The reason a redundant NSWS pump is inoperable and/or unavailable does not change the probability its redundant train will fail during the 72 hour CT or change the probability of a [loss-of-coolant-accident] LOCA occurring during that time. In the event a train fails while its redundant train is shared, immediate action can be taken to restore the shared train from the shared alignment or the unit can be shutdown.

Since a unit's redundant service water train is placed in a shared configuration to mitigate a LOSW event, margin of safety is considered on each unit. Technical Specifications allows a nuclear service water train to be removed from service for up to 72 hours. The shared unit's margin of safety is maintained by limiting the shared alignment to <72 hour completion time consistent with current TS allowances. Implementation of this amendment will improve the margin of safety on a unit experiencing a LOSW event consistent with the intent of NRC Generic Letter 91–13.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salgado.

Duke Energy Carolinas, LLC, Docket No. 50–269, Oconee Nuclear Station, Unit 1 (ONS 1), Oconee County, South Carolina

Date of amendment request: April 3, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to authorize a one-time, 15 month extension to the integrated leak rate test (ILRT) of the reactor containment building (also known as the containment), which would align the test schedule with the refueling outage schedule. The ILRT is normally performed every 10 years. The upcoming ILRT is currently due by December 8, 2013.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption involves a one-time extension to the current interval for ONS 1 Type A containment testing. The current test interval of 120 months (10 years) would be extended on a one-time basis to no longer than approximately 135 months from the last Type A test. The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

This proposed extension is for next ONS 1 Type A containment leak rate test only. The Type B and C containment leak rate tests would continue to be performed at the frequency currently required by the ONS 1 TS. As documented in NUREG 1493, Type B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The ONS 1 Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Section Xl, the Maintenance Rule, and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test.

Based on the above, the proposed extension does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, it is concluded that the proposed amendment does not significantly increase the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves a one-time extension to the current interval for the ONS 1 Type A containment test. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (i.e., no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to the TS involves a one-time extension to the current interval for the ONS 1 Type A containment test. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests for ONS 1. The proposed surveillance interval extension is bounded by the 15-month extension currently authorized within NEI 94–01, Revision 0. Type B and C containment leak rate tests would continue to be performed at the frequency currently required by TS. Industry experience supports the conclusion

that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, TS and the Maintenance Rule serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A test interval.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salad.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 16, 2011, as supplemented by letters dated January 20, March 1, March 16, and April 18, 2012.

Description of amendment request: The proposed amendments would revise the Technical Specifications and the Updated Final Safety Analysis Report to add the new Protected Service Water (PSW) System to the plant's licensing basis as an additional method of achieving and maintaining safe shutdown of the reactors in the event of a high-energy line break or a fire in the turbine building, which is shared by all three units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis of the no significant hazards consideration is presented below:

Criterion 1:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes proposed include the construction of a new PSW building, which will have the equipment to receive electrical power from two independent sources and provide electrical power to important equipment located in the auxiliary building or the reactor containment building without being routed through the turbine building. Since certain high-energy line breaks (HELBs) or fires in the turbine building could adversely affect the power supplies to equipment needed to maintain the reactors in safe shutdown, the PSW System provides added assurances that safe shutdown can be achieved and maintained. The PSW system does not have any failure modes that would initiate the type of accidents previously evaluated, so there will be no increase in the probability of an accident previously evaluated. The PSW System modifications will be designed and installed in accordance with applicable quality standards such that there will be no significant increase in the probability of failure or malfunction of existing structures, systems, or components (SSCs) used to mitigate accidents. Since there will be no significant increase in the probability of malfunction of these SSCs, there also will be no significant increase in the consequences of accidents previously evaluated.

Criterion 2:

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed modifications are designed to enhance the station's ability to achieve safe shutdown following a HELB or fire in the turbine building. As the new equipment will be designed and installed in accordance with applicable quality standards, there is reasonable assurance that it will not introduce new malfunctions or accident initiators different from the accidents that are already evaluated.

Criterion 3:

Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The addition of the PSW system improves the station's overall risk margin, therefore this change does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salgado.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: April 4, 2012.

Description of amendment request: The proposed amendment addresses the Arkansas Nuclear One, Unit No. 2 (ANO–2) revised fuel handling accident (FHA) based on the U.S. Nuclear Regulatory Commission (NRC) staff approved license amendment request regarding use of Alternate Source Terms (AST) (NRC safety evaluation dated April 26, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110980197)). As presented in the licensee's letter dated March 31, 2010 (ADAMS Accession No. ML100910241), the original FHA analysis assumed failure of 60 fuel rods in a single fuel assembly. The revised analysis assumes the failure of all fuel rods in two fuel assemblies (472 rods). The revised analysis was provided in the licensee's letter dated June 23, 2010 (ADAMS Accession No. ML102000199).

The changes necessary to support the revised FHA affect similar Technical Specifications (TSs) associated with NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Travelers TSTF–51, Revision 2, ''Revise Containment Requirements During Handling Irradiated Fuel and Core Alterations''; TSTF–272, Revision 1, ''Refueling Boron Concentration Clarification''; TSTF–268, Revision 2, ''Operations Involving Positive Reactivity Additions''; and TSTF–471, Revision 1, ''Eliminate use of Term Core Alterations in Actions and Notes.'' Therefore, the licensee proposes to adopt these TSTFs in conjunction with changes necessary to support the revised FHA. Additionally, administrative and/or editorial errors noted during the review are also corrected (in relation to the TS pages affected by the aforementioned proposed changes).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. Each of the five items described above is addressed individually under each of the three standards, as presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Revised FHA

Response: No.

TS changes associated with the FHA analysis ensure the initial assumptions of the FHA are maintained and, therefore, act to minimize the consequences of an accident by ensuring TS required features are operable during the movement of fuel assemblies. The FHA analysis was recently accepted by the NRC during adoption of Alternate Source

Terms for ANO–2. The probability of a fuel assembly drop (or any load drop) is unchanged by the revised analysis. Therefore, the revised FHA does not involve a significant increase in the probability of an accident previously evaluated.

The FHA analysis was recently accepted by the NRC during adoption of Alternate Source Terms for ANO–2. In addition, Licensee's has reviewed station procedures and controls in order to verify that no other loads, other than a new or irradiated fuel assembly, need be addressed with regard to a FHA (i.e., no other known load carried over irradiated fuel assemblies exists which would be expected to cause fuel damage if dropped). The proposed TS changes simply ensure required systems will be operable during operations that could lead to an FHA. Based on the above, the proposed FHA-related changes to the TSs do not result in a significant increase in the consequences of an accident previously evaluated.

TSTF–51 and TSTF 471

Response: No.

The only design basis accident assumed for ANO–2 related to the proposed changes is the FHA. The boron dilution event is evaluated, but considered an unlikely event due to the time available for operator response and the administrative controls that permit early detection of the event. The loss of SDC [shutdown cooling] event has little relationship and minimal impact with regard to a FHA. TSTF–51 and TSTF–471 simply replace the use of the previously defined ''core alterations'' term with requirements associated with the movement of fuel assemblies, since the drop of a fuel assembly is the only event that could reasonably lead to an FHA or a significant challenge to the plant.

The removal of all references to ''core alterations'' in favor of restrictions associated with the movement of fuel assemblies eliminates current restrictions associated with the manipulation of other core components (i.e., sources or reactivity control components within the core) since such manipulation cannot result in an FHA, boron dilution event, or loss of SDC. In addition, manipulation of these other components cannot present a significant challenge to SDM [shutdown margin] because the TS required RCS [reactor coolant system] boron concentration for Mode 6 operation provides substantial margin to criticality.

Changes associated with TSTF–51 and TSTF–471 do not modify limitations in such a way that the consequences of an FHA would be greater than that assumed in the FHA analysis (i.e., 10 CFR 50.67 and General Design Criterion (GDC) 19 limitations are not exceeded following a FHA)).

Based on the above, the proposed changes associated with the adoption of TSTF–51 and TSTF–471 do not result in a significant increase in the probability or consequences of an accident previously evaluated.

TSTF–272

Response: No.

Changes associated with TSTF–272 simply place additional restrictions on Mode 6 operations by ensuring the boron concentration of the water in the refueling canal meets the same TS limits required for the RCS when the RCS is in direct hydraulic communication with the refueling canal (i.e., reactor vessel head removed and refueling canal filled). These changes are unrelated to any accident initiator and further prohibit any challenge to the fuel in the reactor vessel by ensure sufficient boron concentration is maintained during Mode 6 operations. Therefore, these changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

TSTF–286

Response: No.

Changes associated with TSTF–286 permit operator control of RCS inventory and temperature when certain TS requirements are not met, provide the overall required SDM of the RCS is maintained. The activities that involve inventory makeup from sources with boron concentrations less than the current RCS concentration (i.e., boron dilution) need not be precluded in the TSs provided the required SDM is maintained for the worst-case overall effect on the core. Note that an unexpected boron dilution event is considered unlikely for ANO–2 due to the significant period of time for operator detection and response before SDM would be significantly challenged (reference ANO–2 SAR Section 15.1.4.3). In addition, while a boron dilution event is evaluated in the safety analysis, the only ''accident'' assumed for ANO–2 during Mode 6 operations is the FHA. Permitting RCS inventory and temperature adjustments is unrelated to any assumptions associated with a FHA. Therefore, these changes do not result in a significant increase in the probability an accident (or a boron dilution event) previously evaluated. Because an unexpected boron dilution event provides sufficient opportunity for detection and recovery, the proposed changes associated with TSTF–286 likewise do not result in a significant increase in the consequences of an accident (or boron dilution event) previously evaluated.

Enhancements and Administrative Changes

Response: No.

Enhancements and administrative changes proposed for specifications affected by the above revised FHA or TSTF adoptions are unrelated to any accident initiator. Administrative changes likewise cannot impact the consequences of any accident previously evaluated.

Enhancements associated with the Containment Purge system radiation instrumentation ensure Surveillance testing is performed when the system is in service, regardless if an actual Purge is taking place. In addition, the proposed changes ensure appropriate testing is performed prior to placing the system in service each refueling outage. The proposed changes are neutral or more restrictive and, therefore, cannot increase the consequences of an accident previously evaluated.

Based on the above, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Revised FHA

Response: No.

TS changes associated with the revised FHA involve no physical changes to the plant. These changes act to ensure required SSCs are operable when moving irradiated fuel assemblies or new fuel assemblies over irradiated fuel assemblies to limit any Control Room or offsite dose consequences to within acceptable limits. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

TSTF–51 and TSTF–471

Response: No.

TS changes associated with the adoption of these TSTFs involve no physical changes to the plant. The removal of all references to ''core alterations'' in favor of restrictions associated with the movement of fuel assemblies eliminates current restrictions associated with the manipulation of other core components (i.e., sources or reactivity control components within the core). Such manipulations cannot result in an FHA, boron dilution event, or loss of SDC. In addition, such manipulations cannot result in an appreciable change in core reactivity due to the high RCS boron concentration required during refueling operations by the TSs. The proposed changes do not introduce a new accident initiator, accident precursor, or accident-related malfunction mechanism.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

TSTF–272

Response: No.

Changes associated with TSTF–272 place additional restrictions on Mode 6 operations by ensuring the boron concentration of the water in the refueling canal meets the same TS limits required for the RCS when the RCS is in direct hydraulic communication with the refueling canal (i.e., reactor vessel head removed and refueling canal filled). These changes are unrelated to any accident initiator and further prohibit any challenge to the fuel in the reactor vessel by ensure sufficient boron concentration is maintained during Mode 6 operations. The proposed changes do not introduce a new accident initiator, accident precursor, or accident-related malfunction mechanism. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

TSTF–286

Response: No.

Changes associated with TSTF–286 permit operator control of RCS inventory and temperature when certain TS requirements are not met, provide the overall required SDM of the RCS is maintained. No physical plant changes are related to these TS changes. The only accident or event that could be affected by this change is the boron dilution event, which has been previously evaluated. The proposed changes do not introduce a new accident initiator, accident precursor, or accident-related malfunction

mechanism. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Enhancements and Administrative Changes

Response: No.

Enhancements and administrative changes proposed for specifications affected by the above revised FHA or TSTF adoptions are unrelated to any accident initiator and involve no physical changes to the plant.

Enhancements associated with the Containment Purge system radiation instrumentation ensure Surveillance testing is performed when the system is in service, regardless if an actual Purge is taking place. In addition, the proposed changes ensure appropriate testing is performed prior to placing the system in service each refueling outage.

The proposed changes do not introduce a new accident initiator, accident precursor, or accident-related malfunction mechanism. Based on the above, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Revised FHA

Response: No.

TS changes associated with the revised FHA act to ensure required SSCs [structures, systems, and components] are operable when moving irradiated fuel assemblies or new fuel assemblies over irradiated fuel assemblies to limit any Control Room or offsite dose consequences to within acceptable limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

TSTF–51 and TSTF–471

Response: No.

The removal of all references to ''core alterations'' in favor of restrictions associated with the movement of fuel assemblies eliminates current restrictions associated with the manipulation of other core components (i.e., sources or reactivity control components within the core). Such manipulations cannot result in an FHA, boron dilution event, or loss of SDC. In addition, such manipulations cannot result in an appreciable change in core reactivity due to the high RCS boron concentration required during refueling operations by the TSs. Changes associated with TSTF–51 and TSTF–471 do not modify limitations in such a way that the consequences of an FHA would be greater than that assumed in the FHA analysis (i.e., 10 CFR 50.67 and GDC 19 limitations are not exceeded following a FHA). Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

TSTF–272

Response: No.

Changes associated with TSTF–272 place additional restrictions on Mode 6 operations by ensuring the boron concentration of the water in the refueling canal meets the same TS limits required for the RCS when the RCS is in direct hydraulic communication with the refueling canal (i.e., reactor vessel head removed and refueling canal filled). These changes are more restrictive than the current specification and therefore do not involve a significant reduction in a margin of safety.

TSTF–286

Response: No.

Changes associated with TSTF–286 permit operator control of RCS inventory and temperature when certain TS requirements are not met, provide the overall required SDM of the RCS is maintained. The only accident or event that could be affected by this change is the boron dilution event, which has been previously evaluated. While the margin between existing boron concentration and that required to meet SDM requirements may be reduced, margin is gained by permitting operators to take corrective action to maintain RCS inventory and temperature within limits during periods when such operations are otherwise prohibited. While not quantifiable, the changes associated with TSTF–286 have a general balanced effect in relation to the margin of safety. Because an unexpected boron dilution event provides sufficient opportunity for detection and recovery, the proposed changes associated with TSTF–286 do not involve a significant reduction in a margin of safety.

Enhancements and Administrative Changes

Response: No.

Enhancements and administrative changes proposed for specifications affected by the above revised FHA or TSTF adoptions are unrelated to any accident initiator or mitigation strategy. Enhancements associated with the Containment Purge system radiation instrumentation ensure Surveillance testing is performed when the system is in service, regardless if an actual Purge is taking place. In addition, the proposed changes ensure appropriate testing is performed prior to placing the system in service each refueling outage. Based on the above, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: May 1, 2012.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS) on a one-time basis by adding a note to TS Table 3.3.5.1–1, Function 1d, Modes 4 and 5, specifying that Function 1d is not required to be met during Refueling Outage (RFO) 23 in Modes 4 and 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed amendment would revise the DAEC TS on a one-time basis by adding a note to TS Table 3.3.5.1–1, Function 1d, Modes 4 and 5, specifying that Function 1d is not required to be met during RFO 23 in Modes 4 and 5. Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems, or components.

The low pressure Emergency Core Cooling System (ECCS) subsystems are designed to inject to reflood or to spray the core after any size break up to and including a design basis Loss of Coolant Accident (LOCA). The proposed change to the Core Spray System Operability requirements does not change the operating configurations or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. The change does not require any change in safety analysis methods or results. Also, it does not change the amount of core spray provided to the core in the accident analyses. No changes are proposed to the manner in which the ECCS provides plant protection or which would create new modes of plant operation. The proposed change does not result in any new or affect the probability of any accident initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. This change will only apply when the plant is in MODES 4 and 5 where LOCAs are not postulated to occur. In MODES 4 and 5, the CS function is to mitigate OPDRVs [Operations with the Potential for Draining the Reactor Vessel].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This change does not affect the method by which any plant systems perform a safety function. It does not introduce any new equipment, or hardware changes, which could create a new or different kind of accident. No new release pathways or equipment failure modes are created. No new

accident scenarios failure mechanisms or limiting single failures are introduced as a result of this request. This request does not affect the normal methods of plant operation. The Core Spray System retains its ability to function following any accident previously evaluated and provide the proper flow rate to the core. This change will only apply when the plant is in MODES 4 and 5 where LOCAs are not postulated to occur. In MODES 4 and 5, the CS function is to mitigate OPDRVs. Strict administrative and procedural controls, operator training, and use of human performance tools will be essential to preventing these types of consequential human errors. Furthermore, both CS subsystems will be guarded and no work or testing will be permitted on either of the CS subsystems during RFO 23 when both CS subsystems are needed to be Operable to meet the requirements of LCO 3.5.2.

Therefore, the implementation of the proposed change will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The ECCS are designed with sufficient redundancy such that if a Core Spray subsystem were unavailable, or did not provide the required flowrate, the remaining Core Spray subsystem is capable of providing water and removing heat loads to satisfy the Updated Final Safety Analysis Report requirements for accident mitigation. A minimum of two low pressure ECCS subsystems continue to be required to be OPERABLE in MODES 4 and 5, except with the spent fuel storage pool gates removed and water level ≥ 21 ft 1 inch over the top of the reactor pressure vessel flange. There is no change in the Limiting Conditions for Operation. For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Mitchell S. Ross, P.O. Box 14000 Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Istvan Frankl.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 22, 2012.

Brief description of amendment request: The proposed amendments would revise the technical specification for the Vogtle Electric Generating Plant, Units 1 and 2, associated with the ''Steam Generator (SG) Program'' allowing the exclusion of portions of the SG tubes below the top of the tube sheet from periodic SG tube inspections during the remaining licensed operations of the plant. Furthermore, the amendment requests to remove the interim SG alternative inspection criteria that had been previously approved.

Date of publication of individual notice in Federal Register: May 25, 2012 (77 FR 31402).

Expiration date of individual notice: July 24, 2012.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: November 22, 2011, as supplemented by letter dated May 11, 2012.

Brief description of amendment: The amendments remove duplicate Technical Specification (TS) requirements and unit-specific references that are no longer needed. In addition, the administrative changes correct typographical errors and provide clarification to ensure understanding of the required actions of some of the TSs. The changes include corrective actions from the Unit 2 event described in Licensee Event Report (LER) 50–529/2011–001. The changes are administrative or editorial in nature, and would not result in any change to operating requirements. These administrative changes are for TS 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operating''; TS 3.3.2, ''Reactor Protective System (RPS) Instrumentation—Shutdown''; TS 3.3.5, ''Engineered Safety Features Actuation System (ESFAS) Instrumentation''; TS 3.5.5, ''Refueling Water Tank (RWT)''; TS 3.3.9, ''Control Room Essential

Filtration Actuation Signal (CREFAS)''; TS 3.7.11, ''Control Room Essential Filtration System (CREFS)''; TS 5.4, ''Procedures''; and TS 5.5.16, ''Containment Leakage Rate Testing Program.''

Date of issuance: June 18, 2012.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1—189; Unit 2—189; Unit 3—189.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2012 (77 FR 3510). The supplemental letter dated May 11, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on January 24, 2012 (77 FR 3510).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2012.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2 (Catawba 1 and 2), York County, South Carolina; Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2 (McGuire 1 and 2), Mecklenburg County, North Carolina; Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (Oconee 1, 2, and 3), Oconee County, South Carolina

Date of application for amendments: December 15, 2009, as supplemented by letter dated September 22, 2011.

Brief description of amendments: The amendments consist of changes to the Technical Specifications (TSs) associated with Reactor Coolant System (RCS) Specific Activity and the deletion of the TS definition of E Bar (average disintegration energy) consistent with Revision 0 to TS Task Force (TSTF) Standard Technical Specification Change Document TSTF–490, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec.''

Date of issuance: June 25, 2012.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Catawba: Unit 1—268 and Unit 2—264; McGuire: Unit 1—266 and Unit 2—246; Oconee: Unit 1—380, Unit 2—382, and Unit 3—381.

Renewed Facility Operating License Nos. NPF–35, NPF–52, NPF–9, NPF–17, DPR–38, DPR–47, and DPR–55: Amendments revised the licenses.

Date of initial notice in ***Federal Register:*** March 23, 2010 (75 FR 13789). The September 22, 2011, supplement did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: October 21 and December 14, 2010, as supplemented by letters dated December 21, 2010, January 7, 2011, January 28, February 22, March 3, March 9 (two letters), March 16 (two letters), March 23, March 25, March 31 (two letters), April 14 (two letters), April 22 (2 letters), April 26, April 28 (2 letters), April 29, May 11, May 18, May 19 (two letters), May 26 (two letters), June 7, June 9, June 21 (two letters), July 7 (two letters), July 22, July 29, August 5, August 11, August 16 (two letters), August 19, August 25 (two letters), August 29, September 14, September 16, September 30 (two letters), October 6, October 12 (two letters), October 14, October 15, November 9, December 22 (2 letters), December 31, 2011, January 10, 2012, January 16 (two letters), January 17, January 19, January 23 (two letters), January 25, January 31, February 3, February 15, February 23 (two letters), and March 15, 2012.

Brief description of amendments: The proposed amendments would increase the licensed core power level for Turkey Point, Units 3 and 4 from 2300 megawatts thermal (MWt) to 2644 MWt. This represents a net increase in the core thermal power of approximately 15 percent, including a 13-percent power uprate and a 1.7 percent measurement uncertainty recapture, over the current licensed thermal power level and is defined as an extended power uprate. The proposed amendments would change the renewed facility operating licenses, the technical specifications (TSs) and licensing bases to support operation at the increased core thermal power level, including changes to the maximum licensed reactor core thermal power, reactor core safety limits, reactor protection system and engineered safety feature actuation system limiting safety system settings, and emergency diesel generator surveillance start voltage and frequency. Additional TS changes include reactor coolant system heatup and cooldown limitations, pressurizer safety valve settings, accumulator and refueling water storage tank boron concentrations, main steam safety valve maximum allowable power level and lift settings, new main feedwater isolation valves, and core operating limits report references. A complete list of the proposed TS changes and the licensee's basis for change can be found in Attachment 1 of the licensee's application (Agencywide Documents and Management System Accession No. ML103560167).

Date of issuance: June 15, 2012.

Effective date: Unit 3—This license amendment is effective as of its date of issuance and shall be implemented prior to Unit 3 startup from the spring 2012 refueling outage. Unit 4—This license amendment is effective as of its date of issuance and shall be implemented prior to Unit 4 startup from the fall 2012 refueling outage.

Amendment Nos.: Unit 3—249 and Unit 4—245.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 9, 2011 (76 FR 26771). The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 15, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: August 17, 2011, as supplemented by letters dated October 14, and December 1, 2011.

Brief description of amendments: The amendments revised items in Technical Specification (TS) 3.3.3.3, Table 3.3–5, Accident Monitoring Instrumentation, High Range-Noble Gas Effluent Monitors, Main Steam Lines, Instrument 19d, and TS 4.3.3.3, Table 4.3–4 related

to the need to have High Range-Noble Gas Effluent Monitors for the Main Steam Lines. The changes relocated the TSs and surveillance requirements for this instrument to the Updated Final Safety Analysis Report and related procedures.

Date of issuance: June 15, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 3—250 and Unit 4—246.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs and Surveillance Requirements.

Date of initial notice in ***Federal Register***. October 18, 2011 (76 FR 64393). The supplements dated October 14 and December 1, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 15, 2012.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: May 25, 2011.

Brief description of amendments: The amendments relocate Technical Specifications (TSs) in Section 5.2—''Containment,'' Section 5.4—''Reactor Coolant System,'' and Section 5.6—''Component Cyclic or Transient Limit,'' to the Updated Final Safety Analysis Report. TS 5.3.3 regarding spent fuel storage pool capacity would be revised to a total pool capacity limit only.

Date of issuance: June 21, 2012.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 3–251 and Unit 4–247.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs.

Date of initial notice in ***Federal Register***: October 18, 2011 (76 FR 64392).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 2012.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 19, 2012.

Brief description of amendment: The NRC issued Amendment No. 239, Departure from a Method of Evaluation for the Auxiliary Building Overhead Crane (FHCR–5), on December 27, 2011. Amendment No. 239 was approved to be implemented within 180 days of issuance of the amendment. By letter dated March 19, 2012, the licensee requested extending the implementation period for Amendment 239 to allow for installation and testing of the new single failure proof FHCR–5. This amendment approved additional time to complete the implementation of Amendment No. 239 from 180 days to, ''Implementation shall be completed 90 days prior to moving a spent fuel shipping cask with FHCR–5.''

Date of issuance: June 26, 2012.

Effective date: As of the date of issuance.

Amendment No.: 241.

Facility Operating License No. DPR–72: Amendment approved a revision to the Amendment No. 239 implementation schedule.

Date of initial notice in ***Federal Register:*** April 17, 2012 (77 FR 22814).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of June 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–16656 Filed 7–9–12; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Employee Representative's Status and Compensation Reports; OMB 3220–0014.

Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term ''employee'' includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term ''employer,'' as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC–2a, *Employee Representative's Status Report,* and DC–2, *Employee Representative's Report of Compensation,* to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent. The RRB proposes a minor editorial change to both Forms DC–2a and DC–2.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–2a	3	15	1
DC–2	65	30	33
Total	68		34

2. *Title and purpose of information collection:* Nonresident Questionnaire; OMB 3220–0145.

Under Public Laws 98–21 and 98–76, benefits under the Railroad Retirement Act payable to annuitants living outside the United States may be subject to taxation under United States income tax laws. Whether the social security equivalent and non-social security equivalent portions of Tier I, Tier II, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depends on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United States and the country in which the beneficiary is a legal resident has been claimed. To effect the required tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresident's citizenship and legal residence status.

To secure the required information, the RRB utilizes Form RRB–1001, *Nonresident Questionnaire,* as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent. The RRB proposes no changes to Form RRB–1001.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
RRB–1001 (Initial Filing)	300	30	250
RRB–1001 (Tax Renewal)	1,000	30	400
Total	1,300		650

3. *Title and purpose of information collection:* Statement of Claimant or Other Person; OMB 3220–0183.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to a change in an annuity beginning date(s), date of marriage(s), birth(s), prior railroad or non-railroad employment, an applicant's request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, *Statement of Claimant or Other Person,* to obtain from applicants or other persons, the supplemental or corrective information needed to determine applicant eligibility for an RRA annuity or RUIA benefits. Completion is voluntary. One response is requested of each respondent. The RRB proposes no changes to Form G–93.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–93	900	15	225

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written

comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–16795 Filed 7–9–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30128; 812–13833]

AQR Capital Management, LLC, et al.; Notice of Application

July 3, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF THE APPLICATION: The requested order would (a) permit certain registered management investment companies to acquire shares of certain registered open-end management investment companies that are outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: AQR Capital Management, LLC (the ''Adviser''), CNH Partners, LLC (the ''Sub-Adviser''), AQR Funds (the ''Trust'') and ALPS Distributors, Inc. (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on October 14, 2010, and amended on January 6, 2011, September 30, 2011, and June 13, 2012.

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 July 25, 2012, 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Adviser, Sub-Adviser and the Trust, Two Greenwich Plaza, Greenwich CT 06830; Distributor: 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6879, or Daniele Marchesani, 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 an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is comprised of separate series that pursue distinct investment objectives and strategies. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each series of the Trust. The Sub-Adviser, an affiliate of the Adviser, is a Delaware limited liability company and is registered as an investment adviser under the Advisers Act. The Sub-Adviser serves as investment sub-adviser to two series of the Trust.[1] The Distributor is a Colorado corporation and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Distributor serves as principal underwriter and distributor for the shares of the Underlying Funds (as defined below).

2. Applicants request an exemption to permit registered management investment companies that operate as a ''fund of funds'' and that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trust (''Unrelated Funds of Funds'') to acquire shares of separate series of the Trust that do not operate as ''funds of funds'' (''Underlying Funds'')[2] in excess of the limits in section 12(d)(1)(A) of the Act, and to permit Underlying Funds, any principal underwriter for an Underlying Fund, and any broker or dealer registered under the Exchange Act (''Broker'') to sell shares of an Underlying Fund to an Unrelated Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants request that the relief apply to: (a) Each registered open-end management investment company or series thereof that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trust, and that is advised by the Adviser or Sub-Adviser or any entity controlling, controlled by, or under common control with the Adviser or Sub-Adviser (such registered open-end management investment companies or their series are included in the term ''Underlying Funds''); (b) each Unrelated Fund of Funds that enters into a Participation Agreement (as defined below) with an Underlying Fund to purchase shares of the Underlying Fund; and (c) any principal underwriter to an Underlying Fund or Broker selling shares of an Underlying Fund.[4]

[1] All references to the term ''Adviser'' or ''Sub-Adviser'' include successors-in-interest to the Adviser or Sub-Adviser, respectively. Successors-in-interest are limited to any entity resulting from a name change, a reorganization of the Adviser or Sub-Adviser, respectively, into another jurisdiction or a change in the type of business organization.

[2] As of the date of the Application, the Underlying Funds include the following series of the Trust: AQR Global Equity Fund, AQR International Equity Fund, AQR International Small Cap Fund, AQR Emerging Markets Fund, AQR Equity Plus Fund, AQR Small Cap Core Fund, AQR Small Cap Growth Fund, AQR Diversified Arbitrage Fund, AQR Momentum Fund, AQR Small Cap Momentum Fund, AQR International Momentum Fund, AQR Managed Futures Strategy Fund, AQR Risk Parity Fund, AQR Multi-Strategy Alternative Fund, AQR Tax-Managed Momentum Fund, AQR Tax-Managed Small Cap Momentum Fund, AQR Tax-Managed International Momentum Fund, AQR U.S. Defensive Equity Fund, AQR International Defensive Equity Fund, AQR Emerging Defensive Equity Fund, AQR Risk-Balanced Commodities Strategy Fund, AQR Risk-Balanced Commodities Strategy LV Fund, AQR Moderate Risk-Balanced Fund and AQR Aggressive Risk-Balanced Fund.

[3] Certain of the Underlying Funds may in the future pursue their investment objective through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. An Unrelated Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the Underlying Fund is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as its corresponding master fund (each a ''Master Fund'').

[4] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Unrelated Fund of Funds may rely on the requested order only to invest in an

Continued

3. An Underlying Fund may invest up to 25% of its assets in a wholly-owned and controlled subsidiary of the Underlying Fund, organized under the laws of the Cayman Islands or another non-U.S. jurisdiction (a ''Cayman Sub'') in order to invest in commodity-related instruments and certain other instruments. The Adviser and/or the Sub-Adviser will serve as the investment adviser to both such Underlying Fund and Cayman Sub. The Cayman Sub is created for the purpose of assuring that the Underlying Fund continues to qualify as a regulated investment company for U.S. federal income tax purposes.

4. Each Unrelated Fund of Funds will be advised by an investment adviser, within the meaning of section 2(a)(20)(A) of the Act, that is registered as an investment adviser under the Advisers Act (an ''Unrelated Fund of Funds Adviser''). An Unrelated Fund of Funds or its Unrelated Fund of Funds Adviser may contract with an investment adviser that meets the definition of section 2(a)(20)(B) of the Act (an ''Unrelated Fund of Funds Subadviser''). Applicants state that Unrelated Funds of Funds will be interested in using the Underlying Funds as part of their overall investment strategy.

5. Applicants also request an exemption to the extent necessary to permit any existing or future funds that operate as ''funds of funds'' and that are part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts (''Related Funds of Funds'') and which invest in other Underlying Funds in reliance on section 12(d)(1)(G) of the Act, and which are also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[5]

6. Consistent with its fiduciary obligations under the Act, each Related Fund of Fund's board of trustees will review the advisory fees charged by the Related Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Related Fund of Funds may invest.

Applicants' Legal Analysis

Investments in Underlying Funds by Unrelated Funds of Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the 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 broker or 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.

2. 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Unrelated Funds of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to an Unrelated Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will adequately address the policy concerns underlying sections 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. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither an Unrelated Fund of Funds nor an Unrelated Fund of Funds Affiliate would be able to exert undue influence over the Underlying Funds.[6] To limit the control that an Unrelated Fund of Funds may have over an Underlying Fund, applicants propose a condition prohibiting the Unrelated Fund of Funds Adviser, any person controlling, controlled by, or under common control with the Unrelated Fund of Funds 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 that is advised or sponsored by the Unrelated Fund of Funds Adviser or any person controlling, controlled by, or under common control with the Unrelated Fund of Funds Adviser (the ''Unrelated Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Unrelated Fund of Funds Subadviser, any person controlling, controlled by or under common control with the Unrelated Fund of Funds Subadviser, 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 Unrelated Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Unrelated Fund of Funds Subadviser (the ''Unrelated Fund of Funds Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Underlying Funds, including that no Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an open-end fund) will cause an Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an

Underlying Fund and not in any other registered investment company.

[5] Applicants request that the relief apply to each registered open-end management investment company or series thereof that operates as a ''fund of funds'' and that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trust, and is advised by the Adviser or Sub-Adviser or any entity controlling, controlled by or under common control with the Adviser or Sub-Adviser.

[6] An ''Unrelated Fund of Funds Affiliate'' is an Unrelated Fund of Funds Adviser, Unrelated Fund of Funds Subadviser, a promoter, or a principal underwriter of an Unrelated Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. An ''Underlying Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of an Underlying Fund (or its respective Master Fund or Cayman Sub), and any person controlling, controlled by, or under common control with any of those entities.

Underwriting Affiliate (''Affiliated Underwriting'').

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Unrelated Fund of Funds, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''), will find that the advisory fees charged under such advisory 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 Underlying Fund in which the Unrelated Fund of Funds may invest. In addition, an Unrelated Fund of Funds Adviser will waive fees otherwise payable to it by the Unrelated Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund under rule 12b–1 under the Act) received from an Underlying Fund by the Unrelated Fund of Funds Adviser or an affiliated person of the Unrelated Fund of Funds Adviser, other than any advisory fees paid to the Unrelated Fund of Funds Adviser or its affiliated person, by an Underlying Fund, in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund. Applicants also state that with respect to registered separate accounts that invest in an Unrelated Fund of Funds, no sales load will be charged at the Unrelated Fund of Funds level or at the Underlying Fund level.[7] Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rules''), if any, will only be charged at the Unrelated Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in an Unrelated Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Unrelated Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.[8]

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will 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 in certain circumstances identified in condition 12 below. Applicants also represent that to ensure that Unrelated Funds of Funds comply with the terms and conditions of the requested exemption from section 12(d)(1)(A) of the Act, an Unrelated Fund of Funds must enter into a participation agreement between the Trust, on behalf of the relevant Underlying Fund, and the Unrelated Funds of Funds (''Participation Agreement'') before investing in an Underlying Fund in excess of the limits in section 12(d)(1)(A). The Participation Agreement will require the Unrelated Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Unrelated Fund of Funds that it may rely on the requested order only to invest in the Underlying Funds and not in any other registered investment company.

7. Applicants state that investments by an Underlying Fund in a Cayman Sub also do not raise concerns about undue influence, layering of fees and complex structures. Applicants represent that: (a) the Underlying Fund will be the sole and legal beneficial owner of its Cayman Sub, which addresses concerns regarding pyramiding of voting control as a means of undue influence; (b) the Adviser and/or the Sub-Adviser will manage the investments of both the Underlying Fund and its Cayman Sub, which addresses concerns over undue influence by the Adviser; and (c) there will be no inappropriate layering of fees and expenses as a result of an Underlying Fund investing in a Cayman Sub. Applicants, further represent that the financial statements of the Cayman Sub will be consolidated with those of the Underlying Fund, if permitted by the applicable accounting standards. In addition, in assessing compliance with the asset coverage requirements under section 18(f) of the Act, an Underlying Fund (or its respective Master Fund) will deem the assets, liabilities and indebtedness of a Cayman Sub in which the Underlying Fund (or its respective Master Fund) invests as its own. Finally, the expenses of the Cayman Sub will be included in the total annual fund operating expenses in the prospectus of the Underlying Fund.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit an Underlying Fund that is an affiliated person of an Unrelated Fund of Funds because the Unrelated Fund of Funds holds 5% or more of the Underlying Fund's shares to sell its shares to and redeem its shares from an Unrelated Fund of Funds. Applicants state that any proposed transactions directly between an Underlying Fund and an Unrelated Fund of Funds will be consistent with the policies of each Underlying Fund and Unrelated Fund of Funds. The Participation Agreement will require any Unrelated Fund of Funds that purchases shares from an Underlying Fund to represent that the purchase of shares from the Underlying Fund by an Unrelated Fund of Funds will be accomplished in compliance with the investment restrictions of the Unrelated Fund of Funds and will be consistent with the investment policies set forth in the Unrelated Fund of Funds' registration statement.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if 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.

4. Applicants submit that the proposed transactions satisfy the

[7] Applicants represent that each Unrelated Fund of Funds will represent in the Participation Agreement (as defined below) that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the Unrelated Fund of Funds unless the insurance company has certified to the Unrelated Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Unrelated Fund of Funds, including fees and charges at the separate account, Unrelated Fund of Funds, and Underlying Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA Rule to NASD Conduct Rule 2830.

standards for relief under sections 17(b) and 6(c) of the Act.[9] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of shares directly from an Underlying Fund will be based on the net asset value of the Underlying Fund. Applicants state that the proposed transactions will be consistent with the policies of each Underlying Fund and each Unrelated Fund of Funds and with the general purposes of the Act.

Other Investments by Related Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Related Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Related Funds of Funds to invest in Other Investments. Applicants assert that permitting the Related Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Investments in Underlying Funds by Unrelated Funds of Funds

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of an Unrelated Fund of Funds Advisory Group will not control (individually or in the aggregate) an Underlying Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. The members of an Unrelated Fund of Funds Subadvisory Group will not control (individually or in the aggregate) an Underlying Fund (or its respective Master 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 an Underlying Fund, the Unrelated Fund of Funds Advisory Group or the Unrelated Fund of Funds Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an Underlying Fund, it (except for any member of the Unrelated Fund of Funds Advisory Group or Unrelated Fund of Funds Subadvisory Group that is a separate account funding variable insurance contracts) will vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares. This condition does not apply to the Unrelated Fund of Funds Subadvisory Group with respect to an Underlying Fund (or its respective Master Fund) for which the Unrelated Fund of Funds Subadviser or a person controlling, controlled by, or under common control with the Unrelated Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act. A registered separate account funding variable insurance contracts will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account funding variable insurance contracts will either (a) vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares; or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate will cause any existing or potential investment by the Unrelated Fund of Funds in shares of an Underlying Fund to influence the terms of any services or transactions between the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate and the Underlying Fund (or its respective Master Fund or Cayman Sub) or an Underlying Fund Affiliate.

3. The board of directors or trustees of an Unrelated Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that the Unrelated Fund of Funds Adviser and any Unrelated Fund of Funds Subadviser(s) are conducting the investment program of the Unrelated Fund of Funds without taking into account any consideration received by the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate from an Underlying Fund (or its respective Master Fund or Cayman Sub) or an Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Unrelated Fund of Funds in the securities of an Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of Trustees (the ''Board'') of the Underlying Fund (or its respective Master Fund), including a majority of the Independent Trustees, will determine that any consideration paid by the Underlying Fund (or its respective Master Fund or Cayman Sub) to the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in

[9] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Unrelated Fund of Funds, or an affiliated person of such person, for the purchase by the Unrelated Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to an Unrelated Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

relation to the nature and quality of the services and benefits received by the Underlying Fund (or its respective Master Fund or Cayman Sub); (b) is within the range of consideration that the Underlying Fund (or its respective Master Fund or Cayman Sub) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Underlying Fund (or its respective Master Fund or Cayman Sub) and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund (or its respective Master Fund or Cayman Sub)) will cause an Underlying Fund (or its respective Master Fund or Cayman Sub) to purchase a security in any Affiliated Underwriting.

6. The Board of an Underlying Fund (or of its respective Master Fund), including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund (or its respective Master Fund or Cayman Sub) in an Affiliated Underwriting once an investment by an Unrelated Fund of Funds in the securities of the Underlying 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 of the Underlying Fund (or its respective Master Fund) will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Unrelated Fund of Funds in shares of the Underlying Fund. The Board of the Underlying Fund (or its respective Master Fund) shall consider, among other things, (a) Whether the purchases were consistent with the investment objectives and policies of the Underlying Fund (or its respective Master Fund or Cayman Sub); (b) 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 (c) whether the amount of securities purchased by the Underlying Fund (or its respective Master Fund or Cayman Sub) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Underlying Fund shall 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.

7. Each Underlying Fund (or its respective Master Fund) shall 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 shall 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 an Unrelated Fund of Funds in the securities of an Underlying Fund exceeds the limit in 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.

8. Before investing in shares of an Underlying Fund in excess of the limits in section 12(d)(1)(A), each Unrelated Fund of Funds and Underlying Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers 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 an Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), an Unrelated Fund of Funds will notify the Underlying Fund of the investment. At such time, the Unrelated Fund of Funds will also transmit to the Underlying Fund a list of the names of each Unrelated Fund of Funds Affiliate and Underwriting Affiliate. The Unrelated Fund of Funds will notify the Underlying Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Underlying Fund and the Unrelated Fund of Funds will maintain and preserve a copy of the order, the 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.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Unrelated Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contracts 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 Underlying Fund (or its respective Master Fund) in which the Unrelated Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Unrelated Fund of Funds.

10. An Unrelated Fund of Funds Adviser will waive fees otherwise payable to it by the Unrelated Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund (or its respective Master Fund) under rule 12b–1 under the Act) received from an Underlying Fund (or its respective Master Fund or Cayman Sub) by the Unrelated Fund of Funds Adviser, or an affiliated person of the Unrelated Fund of Funds Adviser, other than any advisory fees paid to the Unrelated Fund of Funds Adviser or its affiliated person by the Underlying Fund (or its respective Master Fund or Cayman Sub), in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund. Any Unrelated Fund of Funds Subadviser will waive fees otherwise payable to the Unrelated Fund of Funds Subadviser, directly or indirectly, by the Unrelated Fund of Funds in an amount at least equal to any compensation received from any Underlying Fund (or its respective Master Fund or Cayman Sub) by the Unrelated Fund of Funds Subadviser, or an affiliated person of the Unrelated Fund of Funds Subadviser, other than any advisory fees paid to the Unrelated Fund of Funds Subadviser or its affiliated person by the Underlying Fund (or its respective Master Fund or Cayman Sub), in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund made at the direction of the Unrelated Fund of Funds Subadviser. In the event that the Unrelated Fund of Funds Subadviser waives fees, the benefit of the waiver will be passed through to the Unrelated Fund of Funds.

11. With respect to registered separate accounts that invest in an Unrelated Fund of Funds, no sales load will be charged at the Unrelated Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the

Unrelated Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in an Unrelated Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Unrelated Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Underlying Fund (or its respective Master Fund) will acquire securities of any other 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 that such Underlying Fund (or its respective Master Fund): (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund (or its respective Master Fund) to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions; or (d) invests in a Cayman Sub that is a wholly-owned and controlled subsidiary of the Underlying Fund (or its respective Master Fund) as described in the Application. Further, no Cayman Sub will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with Rule 2a–7 for short-term cash management purposes.

Other Investments by Related Funds of Funds

Applicants agree that any order granting the requested relief will be subject to the following condition:

13. The Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Related Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16770 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67340; File No. SR–CBOE–2012–060]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule for its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Fees Schedule. First, the Exchange proposes to eliminate the Maker fee tier for Makers that add 2,500,000–4,999,999 shares of liquidity in one day (for which such Makers were assessed a $0.0016 per share rate) and make the lowest Maker tier (and corresponding $0.0018 per share fee) apply to any Maker that adds 4,999,999 shares or less of liquidity in one day (all Maker and Taker fees discussed in this filing relate to transactions in securities priced $1 or greater). CBSX also proposes increasing the per share rates for the remaining Maker tiers (aside from the lowest Maker tier) by $0.0002. These changes are proposed for economic and competitive reasons as CBSX attempts to create a continuum of incentives that will allow CBSX to compete for liquidity provision and order flow. As such, the proposed Maker fees for transactions in securities priced $1 or greater would be as follows:

Maker (adds 4,999,999 shares or less of liquidity in one day)	$0.0018 per share.
Maker (adds 5,000,000–9,999,999 shares of liquidity in one day)	$0.0017 per share.
Maker (adds 10,000,000–14,999,999 shares of liquidity in one day)	$0.0016 per share.
Maker (adds 15 million shares or more of liquidity in one day)	$0.0015 per share.

As before, these rates apply to all transactions in securities priced $1 or greater made by the same market participant in any day in which such participant adds the established amount of shares or more of liquidity that is determined in the chart above for each tier. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of these rates. Qualification for these rates will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order.

CBSX also proposes amending its Taker rebate structure for transactions in securities priced $1 or greater.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Currently, for such transactions, the Taker rebate is $0.0015 per share. CBSX proposes amending this structure so that a Taker who removes 9,999,999 shares or less of liquidity in one day or has less than an 85% Execution Rate will continue to receive this $0.0015 rebate per share. However, a Taker who removes 10,000,000 shares or more of liquidity in one day and has equal to or greater than an 85% Execution Rate would receive a rebate of $0.0017 per share. The term ''Execution Rate'' shall be defined as the total number of orders (count) filled or partially filled by CBSX for the same market participant for the previous calendar month divided by the total number of orders sent to CBSX from the same market participant for the previous calendar month (rounded to the nearest whole percentage).

Rejected orders will not count towards determining this Execution Rate. Canceled orders will count towards determining the total number of orders sent to CBSX, but not the total number of orders filled or partially filled. Orders that rest on the CBSX Book until they trade will incur the Maker fee when they trade, but because they executed, will count towards improving the market participant's Execution Rate. The Execution Rate achieved by a market participant for the previous calendar month will apply to the calendar month that immediately follows it. For example, if a market participant achieves an Execution Rate of above 85% for the month of July, then in the month of August, on any day in which that market participant removes 10,000,000 shares of liquidity or more, that market participant will receive the $0.0017 per share rebate for all executions that remove liquidity.

These rates apply to all transactions in securities priced $1 or greater made by the same market participant in any day in which such participant removes the established amount of shares or more of liquidity that is determined in the chart above for each tier. Market participants who share a trading acronym or MPID may aggregate their trading activity for purposes of these rates. Qualification for these rates will require that a market participant appropriately indicate his trading acronym and/or MPID in the appropriate field on the order.

The purpose of the change is to encourage market participants to Take at a greater volume and also to achieve a higher Execution Rate. CBSX wants to incentivize a higher Execution Rate because CBSX believes that participants who route order flow that is likely to remove liquidity will only achieve an 85% or higher Execution Rate if such participants route such orders to CBSX first (as opposed to routing such orders to dark pools or other trading centers prior to seeking execution at ''lit'' exchanges). CBSX desires to create an incentive for Take orders to be sent to CBSX before being sent to other trading centers because orders that scrape through multiple trading centers before CBSX are likely to achieve a lower Execution Rate when the remainder of such orders make it to CBSX because the market may have changed by the time such orders (or remainder of such orders) reach CBSX.

Because all orders sent by a market participant to CBSX will be taken into account when calculating the Execution Rate (except rejected orders), CBSX desires to incentivize the sending of orders that are likely to execute to CBSX. Orders that are sent to CBSX and rest on the CBSX Book will count towards raising the market participant's Execution Rate when the orders execute. This rewards and incentivizes the sending of orders that are likely to execute. Reaching an 85% Execution Rate will mean that a market participant is regularly sending in orders that are likely to execute and is therefore adding useful liquidity to the market. Indeed, this 85% Execution Rate rewards market participants who send orders to CBSX with the intention of either trading immediately or letting the orders rest on the CBSX Book until they execute, thereby incentivizing passive, as well as active, liquidity provision.

CBSX proposes to increase the fee for a cross trade that is the stock component of a qualified contingent trade from $0.0012 per share to $0.0015 per share and to increase the maximum fee for such transactions from $25 per trade to $30 per trade for economic and competitive reasons.

Finally, CBSX proposes to add a fee of $0.0025 per share (minimum rate of $1 per trade, maximum rate of $30 per trade) for two-day settlement of cross trades. CBSX adopted two-day settlement in 2011 [3] but never adopted or assessed fees for the two-day settlement of cross trades, and desires to now do so. The amount of the fee (including the minimum and maximum rates) is the same as the amount for the next-day settlement of cross trades.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Eliminating the Maker fee tier for Makers that add 2,500,000–4,999,999 shares of liquidity in one day (for which such Makers were assessed a $0.0016 per share rate) and making the lowest Maker tier (and corresponding $0.0018 per share fee) apply to any Maker that adds 4,999,999 shares or less of liquidity in one day, and increasing the per-share fees for all other tiers by $0.0002 is reasonable because the amount of the increase is minimal, and the amounts of the fees are within the range of Maker fees that have been assessed previously (and the increases do not change the maximum Maker fee being assessed of $0.0018 per share). The slight increases to the Maker fees for transactions in securities priced $1 or greater, and the different Maker tiers themselves, are equitable and not unfairly discriminatory because the lower fees for market participants who can reach the higher volume tiers will provide an incentive for market participants to execute more trades on CBSX, which in turn will provide for greater volume and liquidity for all CBSX market participants.

Amending the Taker fee structure for transactions in securities priced $1 or greater to provide that a Taker that removes 10,000,000 shares or more of liquidity in one day and achieved an 85% Execution Rate in the previous calendar month is reasonable because those Takers who qualify for this tier will be receiving a larger rebate than they would have prior to this proposed change. This proposed new Taker fee structure is equitable and not unfairly discriminatory because the higher rebate for market participants who hit the new tier will provide an incentive for market participants to attempt to execute more trades on CBSX, which in turn will provide for greater volume and liquidity for all CBSX market participants. The 85% Execution Rate threshold is further equitable and not unfairly discriminatory because it encourages market participants who desire to reach this tier to send orders that are likely to execute to CBSX and allow orders to rest on the CBSX Book until such orders execute, both of which benefit all

[3] *See* Securities Exchange Act Release No. 65417 (September 28, 2011), 76 FR 61772 (October 5, 2011) (SR–CBOE–2011–089).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

market participants by providing available liquidity with which to trade.

Increasing the per-share and maximum fees for a cross trade that is the stock component of a qualified contingent trade is reasonable because the increases are minimal and within the range of other cross trade fees assessed by CBSX, and is equitable and not unfairly discriminatory because the new per-share and maximum fees will be assessed to all market participants equally. Adopting fees for two-day settlement of cross trades is reasonable because the amount of the fees are the same as those being assessed for next-day settlement, and is equitable and not unfairly discriminatory because the new two-day settlement fees will be assessed to all market participants equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–060 and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16763 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67342; File No. SR–BX–2012–046]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program

July 3, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 28, 2012, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposal to extend through December 31, 2012, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot'').[4]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Rule 19b–4(f)(6)(iii) of the Act [5] to the extent needed for timely industry-wide implementation of the proposal.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX'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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Penny Pilot was established in June 2012. *See* Securities Exchange Act Release No. 67256 (June 26, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot).

[5] 17 CFR 240.19b–4(f)(6)(iii).

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to extend the Penny Pilot through December 31, 2012.

For a pilot period scheduled to expire on June 30, 2012, the Penny Pilot allows certain options to be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00; and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher. Options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM''), however, are quoted and traded in minimum increments of $0.01 for all series regardless of the price.

The Exchange believes that the Penny Pilot is a very successful and efficacious pricing program that is similar to penny pilot programs of other options exchanges,[6] and is beneficial to traders, investors, and public customers. The Exchange desires to extend its Penny Pilot. This proposal allows the Penny Pilot to continue in its current format for six months through December 31, 2012.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] 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, by extending the Penny Pilot.

The Exchange notes that the Penny Pilot is a very successful and efficacious pricing program that is beneficial to traders, investors, and public customers. This proposal would allow the Exchange's Penny Pilot to continue in its current format through December 31, 2012, similarly to the penny pilot programs of other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[15] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–046 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–BX–2012–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[6] *See, for example,* BATS, CBOE, ISE, NYSE Arca, Phlx, and NOM (the ''other options exchanges''). Like BX, the other options exchanges are proposing to extend their penny pilot programs through December 31, 2012. The Exchange notes that on or about July 3, 2012, it intends to add penny pilot issues that will be added by the other options exchanges to replace any pilot issues that have been delisted on the other options exchanges. *See, for example,* Phlx–2012–86 and NASDAQ–2012–075.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 4.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–046 and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16764 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67344; File No. SR–MSRB–2012–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change To Amend Rule G–34, on CUSIP Numbers, New Issue, and Market Information Requirements

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2012, the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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 Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G–34 on CUSIP numbers, new issue, and market information requirements (the ''proposed rule change''). The proposed rule change would govern the use by brokers, dealers or municipal securities dealers of the term ''not reoffered'' or the designation ''NRO'' in any of its written communications about new issues of municipal securities.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx*, at the MSRB'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, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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

Summary of Proposed Rule Change. The proposed rule change would amend MSRB Rule G–34 to prohibit any broker, dealer or municipal securities dealer (a ''dealer'') from using the term ''not reoffered'' or other comparable term or designation, such as the commonly used designation of ''NRO,'' without also including the applicable price or yield information about the securities in any of its written communications, electronic or otherwise, sent by or on behalf of the dealer. Such prohibition would apply to any such communication occurring from and after the time of initial award of a new issue of municipal securities. The time of initial award would be the earlier of (A) the Time of Formal Award, or (B) if applicable, the time at which the issuer initially accepts the terms of a new issue of municipal securities subject to subsequent formal award, sometimes referred to as the ''verbal award.'' ''Time of Formal Award'' currently is defined in MSRB Rule G–34(a)(ii)(C)(1)(a) as, ''for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and, for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution.'' The prohibition would not apply to communications occurring prior to the time of initial award of a new issue of municipal securities.

The proposed rule change would improve the availability of current information about initial offering prices or yields of new issues of municipal securities to market participants. Dealers, whether acting as underwriters or in the secondary market, sometimes designate certain maturities of a new issue of municipal securities as not reoffered, or NRO, in communications about such securities, and omit the corresponding initial offering price or yield information. While an underwriter is required to report complete information about initial offering prices or yields (including for maturities designated as NRO) pursuant to MSRB Rules G–32 and G–34 as described below, such information may not be readily available until as late as the end of the ''date of first execution'' of the new issue.[3] The proposed rule change would require underwriters to include such information about initial offering prices or yields in any communication it sends to any party from and after the time of initial award, which occurs prior to the submission deadlines of Rules G–32 and G–34.

More timely information about initial offering prices or yields would improve new issue price discovery for issuers pricing their own same-day transactions as well as for investors and other market participants seeking more contemporaneous price information. Further, the availability of more contemporaneous price information to a larger universe of market participants would significantly reduce pricing inefficiencies in the marketplace. Currently, not all market participants have access to the same universe of price or yield information about new issues of municipal securities as they come to market and, as a result, differences in prices for similar

[3] The date of first execution under Rule G–32 generally is the date on which the underwriter executes its first transactions with a customer or another dealer in any security offered in a primary offering.

securities may reflect in part the lack of broad access to such data useful in more accurately assessing current market values, rather than differences in intrinsic credit, structural or other features of the securities or the respective issuers. Thus, improving timely access to a larger universe of pricing data by more market participants would reduce pricing inefficiency that results from incomplete data.

The proposed rule change also would delete existing subsection (e)(iii) of MSRB Rule G–34, which includes provisions for compliance by dealers with certain registration and testing requirements previously applicable with respect to the start-up phase in 2008 of the New Issue Information Dissemination System (''NIIDS'') operated by the Depository Trust and Clearing Corporation (''DTCC''). This amendment will streamline Rule G–34 by eliminating language from the rule that no longer has any effect.

Currently Applicable MSRB Rules. With certain exceptions, underwriters are required, pursuant to MSRB Rule G–34(a)(ii)(C), to report to NIIDS certain information about most new issues of municipal securities within two hours following the Time of Formal Award, including the initial price or yield at which each maturity of the new issue of municipal securities was sold. Underwriters are also required, pursuant to MSRB Rule G–32(b)(vi)(C)(1)(a), to submit to the MSRB's Electronic Municipal Market Access (EMMA®) system certain information about the new issue, including the initial offering price or yield of all maturities, on or prior to the end of the date of first execution. Under both rules, the initial offering price or yield must be provided for all maturities, including those that are not reoffered, and underwriters cannot use the designation of NRO in their submissions. Initial offering price or yield information submitted to NIIDS is disseminated by DTCC to its subscribers, including market participants and information vendors, upon submission by underwriters for dissemination, typically within two hours following the Time of Formal Award, while such information submitted to the EMMA system becomes available to the public on the EMMA Web site and through subscription services to information vendors and other market participants immediately upon submission and typically by the end of the date of first execution.[4]

Availability of Information About Initial Offering Prices or Yields From Third-Party Vendors. Although, as noted above, information vendors may receive subscriptions from the MSRB or DTCC of data that includes the complete initial offering price or yield information for all maturities, including maturities that are not reoffered, such third-party vendors may also receive information regarding the new issue directly from underwriters or other parties on the underwriters' behalf that may sometimes substitute the designation of NRO for the initial offering price or yield for applicable maturities. Third-party vendors may then post such separately submitted information in a manner designed to highlight new issues coming to market and may otherwise repackage and distribute such information to their subscribers, including a combination of dealers, other information vendors and other market participants. This information disseminated by third party vendors, often including the NRO designation without accompanying initial offering price or yield, is available to their subscribers shortly after submission to such vendor and frequently before the the complete initial offering price or yield information becomes available through NIIDS and the EMMA system. The proposed rule change would result in information about the initial offering prices or yields for NRO maturities to be included in any such separately submitted and disseminated information from and after the initial award.

Effective Date of Proposed Rule Change. The MSRB proposes that the proposed rule change be made effective on the first calendar day of the next succeeding month beginning at least twenty-eight (28) calendar days after the date on which the proposed rule change is approved by the Commission.

[4] In addition, with limited exceptions, MSRB Rule G–14 requires dealers to report the actual prices at which municipal securities are sold to the MSRB's Real-time Transaction Reporting System. Although most prices are required to be reported within 15 minutes of the time of trade, in many cases initial trades by syndicate or selling group members executed on the first day of trading at the published list offering price may be reported by the end of the day. Thus, while these prices are disseminated shortly after receipt to the public on a real-time basis by the MSRB on the EMMA Web site and through subscription services to information vendors and other market participants, transactions reflecting initial offering prices or yields may not be available for dissemination until the end of the first day of trading.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would remove impediments to and perfect the mechanism of a free and open market in municipal securities by prohibiting certain communications that hinder price and market transparency, and by facilitating new issue price discovery. The proposed rule change would require that communications occurring from and after the time of initial award of a new issue that use the designation not reoffered or NRO also include the applicable initial offering price or yield. The proposed rule change would contribute to more effective price discovery for issuers pricing their own same-day transactions resulting from the availability of more complete and contemporaneous pricing of other new issues, as well as for investors and other market participants seeking more contemporaneous price information. These changes would also contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply to all dealers that send written or electronic communications about new issues of municipal securities. Since dealers are already required to provide the initial offering prices or yields under other MSRB rules, dealers would bear no additional burden in obtaining such information to fulfill the requirements of the proposed rule change. In addition, the burden of

adding such price or yield information to communications in which dealers designate a municipal security as not reoffered should be negligible, particularly in light of the fact that dealers already provide price or yield information in comparable communications occurring during the same timeframe in which they do not designate municipal securities as not reoffered. The MSRB believes that any such negligible burden would be greatly outweighed by the benefits accruing to issuers and the marketplace in general from the increased transparency available to issuers as they price their new issues of municipal securities, since such information will assist them is assuring that the pricing of such issue is informed by current market prices.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 13, 2012, the MSRB requested comment on a draft of the proposed rule change (the ''draft proposal'').[5] Comment letters were received from: Bond Dealers of America (''BDA''); Full Life Financial LLC (''Full Life''); Government Finance Officers Association (''GFOA''); Kious and Co. (''Kious''); M. E. Allison & Co., Inc. (''Allison''); McGuirk, Hugh (''McGuirk''); National Association of Independent Public Finance Advisors (''NAIPFA''); Oppenheimer & Co. Inc. (''Oppenheimer''); and UMB Bank, N.A. (''UMB''). Summaries of those comments and the MSRB's responses follow.

Draft proposal would create a more efficient and transparent market. Various commenters[6] supported the draft proposal, saying it would enhance market transparency. BDA said that it would ''allow other comparable transactions to have a better sense of market movement on the day of pricing.'' GFOA said that the intent of the draft proposal rectifies the ''opaque practice'' of designating maturities of new issues without accompanying price and yield information. Allison said it would improve the availability of real-time information about initial offering prices or yields. NAIPFA said that the draft proposal would help ensure that issuers better understand the pricing terms of their securities. Full Life said it can help level the playing field between large and small issuers, and foster fairness between dealers and investors.

Both price and yield data should be reported. GFOA and Full Life said that both price and yield data should be reported. GFOA said that the reporting of just the maturity's price data requires issuers and investors to calculate the corresponding yield, and this added step makes the information less useful to issuers and investors. Full Life said reporting both price and yield data would improve transparency and accuracy of information processing by investors and issuers.

While the MSRB recognizes the value of having both price and yield information available to investors, the MSRB notes that in some circumstances, such as an unknown settlement date, yield cannot be calculated and only price will be available. As a result, the proposed rule change retains the requirement that either price or yield be provided. Further, the various other existing MSRB rules relating to initial offering prices or yields, as described above, generally do not require that both be provided, and changing the requirement in the draft proposal to provide either price or yield to a requirement to provide both price and yield without addressing the existing ability of dealers to use either price or yield under such other MSRB rule provisions, and without making the necessary changes to MSRB information systems, would result in a significant inconsistency across MSRB rules and information systems. The MSRB notes that it has recently published its Long-Range Plan for Market Transparency Products, dated January 27, 2012, in which it lays out a vision for the next stages of its market transparency products that includes, among other things, significant enhancements to the scope and timing of information available through the EMMA system and other related transparency products. The MSRB will keep this comment under advisement and will consider potential changes consistent with the comment as it reviews its market transparency systems and related rules in connection with the changes described in the Long-Range Plan.

Information about new issue pricing. Oppenheimer said that in sealed bid situations, members are not allowed to bid a yield and concession. It suggested, therefore, that the proposal be revised to permit a syndicate member to disclose the reoffering price or yield after a sealed bid has been awarded. Oppenheimer also said that because most notes are issued NRO, the reoffering price should be the reoffering price used to complete IRS Form 8038. Oppenheimer also questioned how to report offering prices or yields for bonds or notes purchased for inventory.[7]

The draft proposal did not limit the time period during which dealers would be prohibited from using the NRO designation without accompanying initial offering price or yield information, and therefore the draft proposal could apply during the time that sealed bids are being provided to issuers prior to the award of a new issue. In response to Oppenheimer's comment concerning sealed bid situations, the MSRB has determined to modify the proposal to limit the applicability of the proposed rule change to communications occurring from and after the time of initial award. Sealed bid submissions occur prior to the time of initial award and are submitted in the context of a competitive sale where the expectation is that bids remain confidential until the issuer reviews all bids at the time of initial award. With respect to Oppenheimer's comments on the use of information from IRS Form 8038 and the reporting of prices or yields for bonds in inventory, the MSRB has no opinion regarding the proper calculation of information for inclusion on an issuer's tax forms but notes that, to the extent a dealer views a new issue municipal security as not being reoffered, the initial offering price or yield that should be reported for purposes of MSRB rules is the price or yield at which such securities were purchased, whether by a dealer for its own inventory or by a customer of the dealer based on a pre-arranged purchase price.

Release of scales prior to official award may lead to inaccurate information in the marketplace and in an underwriter's loss of competitiveness. UMB said that dealers should not be required to release scales prior to an official award because this may lead to inaccurate scales being circulated in the marketplace. UMB also said that releasing scales to the market prior to official award would cause

[5] *See* MSRB Notice 2012–14 (March 13, 2012).

[6] *See* BDA, Full Life, Kious and NAIPFA.

[7] Other comments concerning new issue pricing unrelated to the proposed rule change included comments from GFOA and BDA. GFOA said that new issue pricing information should be submitted as promptly as possible, rather than at the end of the day. BDA said that it supported the MSRB's initiative of incorporating NIIDS data into the EMMA system, saying that it would address the problems that gave rise to the need to eliminate the NRO designation. The MSRB agrees with the suggestion that new issue pricing be available sooner than the end of the day and recently published a request for comment on draft amendments to MSRB Rules G–32 and G–34 that would cause information about new issue pricing to be available on EMMA within two hours of the Time of Formal Award. *See* MSRB Notice 2012–19 (April 10, 2012).

dealers also bidding on same day comparable issues to lose their competitiveness.

UMB's concern is addressed in part by the limitation of the applicability of the proposed rule change to communications occurring from and after the time of initial award. In addition, the proposed rule change would not prohibit a dealer, concerned about a change in pricing between the initial and final awards, from indicating in any communication that prices or yields disseminated prior to the final award may be subject to change. Furthermore, the proposed rule change would not compel an underwriter to disseminate a new issue scale before the formal award; rather, it simply would prohibit the underwriter from stating that some or all of the securities were not reoffered in such communication without also including the initial offering prices or yields. The MSRB also believes that adjusting the time frame during which the rule is applicable would address the concern about competitiveness because underwriters would have been awarded their bid by the time the requirements of the proposed rule change become applicable. By prohibiting the use of the term not reoffered or NRO without accompanying initial price or yield information from and after the time of initial award, the MSRB believes the proposed rule change would be applicable during the period when the information about pricing would be most useful to market participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2012–06 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–MSRB–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2012–06, and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16766 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67346; File No. SR–NYSEMKT–2012–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Exchange Rules Related to Floor Official Duties and Responsibilities in the Exchange's Marketplace

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Exchange Rules related to Floor Official duties and responsibilities in the Exchange's marketplace. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain Exchange Rules pertaining to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

duties and responsibilities of Floor Officials in the Exchange marketplace.

The role of the Floor Official evolved out of the self-regulatory scheme of the Securities Exchange Act of 1934, as amended (the ''Act'').[3] A number of Exchange Rules specify involvement in the marketplace by Floor Officials, senior-level Floor Officials (*i.e.,* Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors), or both.[4]

Typically, the Floor Official's role on the Floor of the Exchange involves the consideration of requests to execute a particular kind of transaction or the supervision of specified trading situations. In addition to their formal role prescribed by the Exchange rules, Floor Officials also provide a more general level of oversight to the marketplace on a day-to-day basis.

Given the evolution of the equities markets away from manual executions and manual enforcement of rules toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic, many of the trading procedures and situations originally requiring Floor Officials involvement have been automated; in other cases, the Floor Official approval has become *pro forma* rather than substantive. In light of this, the Exchange determined that several Exchange Rules should be amended with respect to the duties and responsibilities once assigned to Floor Officials to better comport with today's Exchange market structure.

Proposed Amendments

NYSE MKT Rule 122—Equities provides that, to avoid unfair allocation of securities traded, no member or member organization shall maintain with more than one broker on the Exchange market orders or orders at the same price for the purchase or sale of the same security for the account of the same principal unless permission has been obtained from a Floor Official. The Exchange proposes to amend the rule to remove this approval as a Floor Official function and therefore ban this practice outright.

The Exchange also proposes amending NYSE MKT Rule 128B—Equities, which prescribes the procedures for the publication of changes, cancellations or other errors on the consolidated tape (the ''Tape''). Specifically, Rule 128B.10—Equities requires Floor Official approval to change or correct a transaction that previously appeared on the Tape, cancel a transaction that previously appeared on the Tape and that has been agreed to by all buyers and sellers, and publish a transaction omitted from the Tape (*i.e.,* a sold or sold last sale). In addition, Rule 128B.13—Equities requires Floor Official approval for the publication of a correction to a transaction erroneously reported to ''a reporter'' by a party to the transaction. In the interests of maintaining the integrity of the Tape, the Exchange proposes to elevate the level of approval required under Rules 128B.10—Equities and .13—Equities from Floor Official to senior-level Floor Official (*i.e.,* Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors). In addition, the Exchange proposes to delete ''to a reporter'' in NYSE MKT Rule 128B.13—Equities. Historically, Floor reporters were Exchange employees responsible for collecting and inputting transaction data into the ticker system. The position was eliminated many years ago.

Finally, NYSE MKT Rule 128B.10—Equities provides that, in addition to (proposed senior-level) Floor Official approval, both ''buying and selling members'' must agree to the publication of (1) A change or a correction in a transaction that previously appeared on the Tape, (2) the cancellation of a transaction which previously appeared on the Tape and which was properly rescinded, or (3) a transaction omitted from the Tape made on the Tape on the day of the transaction. The Exchange proposes to add ''or member organizations'' after ''buying and selling members.'' NYSE MKT Rule 2—Equities defines a ''member'' as a natural person. A significant number of Exchange member organizations, however, no longer have Floor-based members, and nearly all transactions printed to the Tape are executed by automated systems. The proposed change to NYSE MKT Rule 128B.10—Equities reflects the changes in the NYSE MKT marketplace away from Floor-based members manually executing the majority of trades printed to the Tape to more automated trading by an increasing number of non-Floor based member organizations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] 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 mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule changes support the objectives of the Act by amending and/or delegating duties and responsibilities once assigned to Floor Officials to better comport with the Exchange's current market structure and to reflect rapidly changing market technology and the development of automated systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the 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 prior to 30 days from the date on which it was filed the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will assist the

[3] 15 U.S.C. 78f.

[4] *See* NYSE MKT Rules 46—Equities and 46A—Equities (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governors).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Exchange in maintaining a fair and orderly market by allowing market participants who agree to cancel a transaction to do so more efficiently, thereby potentially reducing the likelihood that transactions will be printed to the Tape incorrectly. Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–15 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–NYSEMKT–2012–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–15 and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16768 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67347; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Order Granting Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, Adopting NYSE Rule 107C To Establish a Retail Liquidity Program for NYSE-Listed Securities on a Pilot Basis Until 12 Months From Implementation Date, and Adopting NYSE Amex Rule 107C To Establish a Retail Liquidity Program for NYSE Amex Equities Traded Securities on a Pilot Basis Until 12 Months From Implementation Date, and Granting Exemptions Pursuant to Rule 612(c) of Regulation NMS

July 3, 2012.

I. Introduction

On October 19, 2011, the New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'' and together with NYSE, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Liquidity Program (''Program'') on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule changes were published for comment in the **Federal Register** on November 9, 2011.[3] The Commission received 28 comments on the NYSE proposal[4] and 4 comments on the NYSE Amex proposal.[5] On December 19, 2011, the Commission extended the time for Commission action on the proposed rule changes until February 7, 2012.[6] In connection

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR–NYSE Amex-2011–84); and 65672 (November 2, 2011), 76 FR 69788 (SR–NYSE–2011–55).

On May 14, 2012, NYSE Amex filed a proposed rule change, immediately effective upon filing, to change its name to NYSE MKT LLC. *See* SR–NYSEAmex–2012–32. To remain consistent with the previous documents that were submitted in connection with these proposals, the Commission will refer to NYSE MKT LLC as NYSE Amex throughout this order.

[4] *See* Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011 (''Themis Letter''); Garret Cook, dated November 4, 2011 (''Cook Letter''); James Johannes, dated November 27, 2011 (''Johannes Letter''); Ken Voorhies, dated November 28, 2011 (''Voorhies Letter''); William Wuepper, dated November 28, 2011 (''Wuepper Letter''); A. Joseph, dated November 28, 2011 (''Joseph Letter''); Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011 (''Knight Letter I''); Kevin Basic, dated November 28, 2011 (''Basic Letter''); J. Fournier, dated November 28, 2011 (''Fournier Letter''); Ullrich Fischer, CTO, PairCo, dated November 28, 2011 (''PairCo Letter''); James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011 (''Angel Letter''); Jordan Wollin, dated November 29, 2011 (''Wollin Letter''); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 29, 2011 (''Great Mountain Capital Letter''); Wayne Koch, Trader, Bright Trading, dated November 29, 2011 (''Koch Letter''); Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011 (''CFA Letter I''); David Green, Bright Trading, dated November 30, 2011 (''Green Letter''); Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011 (''Bright Trading Letter''); Bodil Jelsness, dated November 30, 2011 (''Jelsness Letter''); Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011 (''TD Ameritrade Letter''); Laura Kenney, dated November 30, 2011 (''Kenney Letter''); Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011 (''Hudson River Trading Letter''); Bosier Parsons, Bright Trading LLC, dated November 30, 2011 (''Parsons Letter''); Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011 (''UBS Letter''); Dr. Larry Paden, Bright Trading, dated December 1, 2011 (''Paden Letter''); Thomas Dercks, dated December 1, 2011 (''Dercks Letter''); Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011 (''BATS Letter''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011 (''SIFMA Letter I''); and Al Patten, dated December 29, 2011 (''Patten Letter'').

[5] *See* Knight Letter I; CFA Letter I; TD Ameritrade Letter; and letter to the Commission from Shannon Jennewein, dated November 30, 2011 (''Jennewein Letter'').

[6] *See* Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).

with the proposals, the Exchanges requested exemptive relief from Rule 612 of Regulation NMS,[7] which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01.[8] The Exchanges submitted a consolidated response letter on January 3, 2012.[9] On January 17, 2012, the Exchanges each filed Amendment No. 1 to their proposals.[10]

On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendments No. 1.[11] On February 16, 2012, the Exchanges each filed Amendment No. 2 to their proposals, which the Commission published for comment in the **Federal Register** on March 1, 2012.[12] In response to the Order Instituting Proceedings and the Notice of Amendments No. 2, the Commission received four additional comment letters on the proposals.[13] On March 20, 2012, the Exchanges submitted a consolidated response letter to the Commission's Order Instituting Proceedings.[14] Additionally, on April 10, 2012, the Exchanges submitted a consolidated response to the comments concerning Amendments No. 2.[15] Finally, on April 11, 2012, the Exchanges submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (''Quote Rule'') based on the Exchanges' and liquidity providers' participation in the Program (''No-Action Request Letter'').[16]

This order approves the proposed rule change, as modified by Amendments Nos. 1 and 2, and grants exemptions from the Sub-Penny Rule sought by the Exchanges in relation to the proposed rule changes.

II. Description of the Proposals

The Exchanges are proposing to establish a Program on a pilot basis to attract retail order flow to the NYSE for NYSE-listed securities, and to NYSE Amex for NYSE Amex-listed securities as well as securities listed on The NASDAQ Stock Market LLC (''Nasdaq'') and traded pursuant to unlisted trading privileges (''UTP''). The proposed Program would allow such order flow to receive potential price improvement, and would be limited to trades occurring at prices equal to or greater than $1.00 per share.

Under the proposed Program, a new class of market participants called Retail Liquidity Providers would be able to provide potential price improvement, in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''),[17] called a Retail Price Improvement Order. Other Exchange member organizations would be allowed, but not required, to submit Retail Price Improvement Orders. When there is a Retail Price Improvement Order in a particular security, the Exchange will disseminate an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. In response, a new class of market participants known as Retail Member Organizations could submit a new type of order, called a Retail Order, to the Exchange. A Retail Order would interact, to the extent possible, with available contra-side Retail Price Improvement Orders.[18] The Exchanges would approve member organizations to be Retail Liquidity Providers and/or Retail Member Organizations.

Types of Orders and Identifier

A Retail Order would be an agency order that originated from a natural person and not a trading algorithm or any other computerized methodology. A Retail Order would be an immediate or cancel order. The Retail Member Organization submitting the order would not be able to alter the terms of such order with respect to price or side of the market. A Retail Order could be submitted in a round lot, odd lot, or partial round lot amounts.

A Retail Liquidity Provider would be required to submit Retail Price Improvement Orders for securities that are assigned to the Retail Liquidity Provider, as further discussed below. A Retail Price Improvement Order would be required to be priced better than the PBBO by at least $0.001 per share.

When a Retail Price Improvement Order is available that is priced at least $0.001 more than the PBBO for a particular security, the Exchange would disseminate an identifier, called a Retail Liquidity Identifier. The Exchanges initially proposed to disseminate the identifier through their proprietary data feeds; they then amended their

[7] 17 CFR 242.612 (''Sub-Penny Rule'').

[8] *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated October 19, 2011. The Exchanges amended the exemptive relief request on January 13, 2012. *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated January 13, 2012 (''Amended Request for Sub-Penny Rule Exemption'').

[9] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 (''Exchanges' Response Letter I'').

[10] In Amendment No. 1, the Exchanges propose to modify the proposals as follows: (1) To state that Retail Member Organizations may receive free executions for their retail orders and the fees and credits for liquidity providers and Retail Member Organizations would be determined based on experience with the Retail Liquidity Program in the first several months; (2) to correct a typographical error referring to the amount of minimum price improvement on a 500 share order; (3) to indicate the Retail Liquidity Identifier would be initially available on each Exchange's proprietary data feeds, and would be later available on the public market data stream; and (4) to limit the Retail Liquidity Program to securities that trade at prices equal to or greater than $1.00 per share.

[11] *See* Securities Exchange Act Release No. 66346, 77 FR 7628 (February 13, 2012) (''Order Instituting Proceedings'').

[12] *See* Securities Exchange Act Release No. 66464 (February 24, 2012), 77 FR 12629. In Amendment No. 2, the Exchanges propose to modify the proposals as follows: (1) Limit the definition of ''Retail Order''; (2) modify the definition of the Retail Liquidity Identifier; and (3) clarify the treatment of odd lots, round lots, and part of a round lot order.

[13] *See* Letters to the Commission from Leonard Amoruso, General Counsel, Knight Capital, Inc., dated March 7, 2012 (''Knight Letter II''); Kurt Schact, CFA, Managing Director, Rhodri Preece, CFA, Director, Capital Markets Policy, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated March 21, 2012 (''CFA Letter II''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 23, 2012 (''SIFMA Letter II''); and Jim Toes, President and CEO, and Jennifer Green Setzenfand, Chairman, Security Traders Association, dated April 26, 2012 (''STA Letter'').

[14] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated March 20, 2012 (''Exchanges' Response Letter II'').

[15] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated April 10, 2012 (''Exchanges' Response Letter III'').

[16] *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Robert Cook, Director, Division of Trading and Markets, dated April 11, 2012.

[17] The terms protected bid and protected offer would have the same meaning as defined in Rule 600(b)(57) of Regulation NMS. Rule 600(b)(57) of Regulation NMS defines ''protected bid'' and ''protected offer'' as ''a quotation in an NMS stock that: (i) [i]s displayed by an automated trading center; (ii) [i]s disseminated pursuant to an effective national market system plan; and (iii) [i]s an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.'' 17 CFR 242.600(b)(57).

[18] As explained further below, the Exchanges have proposed three kinds of Retail Orders, two of which could execute against other interest if they were not completely filled by contra-side Retail Price Improvement Order interest. All Retail Orders would first execute against available contra-side Retail Price Improvement Orders. Any remaining portion of the Retail Order would then either cancel, be executed as an immediate-or-cancel order, or be routed to another market for execution, depending on the type of Retail Order.

proposals to state that they would implement the Program in a manner that allowed the dissemination of the identifier through the consolidated public market data stream as soon as practicable, and they now represent that they will in fact be able to disseminate the identifier through the consolidated public market data stream as soon as the Program is implemented, if it is approved.[19] The identifier would reflect the symbol for a particular security and the side (buy or sell) of the Retail Price Improvement Order, but it would not include the price or size of such interest.

Retail Member Organizations

In order to become a Retail Member Organization, an Exchange member organization must conduct a retail business or handle retail orders on behalf of another broker-dealer. The member organization must submit an application with supporting documentation and an attestation to the Exchange that the order flow would qualify as Retail Orders.

The Exchange would review the application and notify the member organization of the Exchange's decision in writing. If a member organization did not receive approval to become a Retail Member Organization, then the member organization could appeal as provided below or reapply 90 days after the Exchange issued the disapproval.

The Exchange would require a Retail Member Organization to have written policies and procedures in place to assure that only bona fide retail orders are designated as such. The written policies and procedures would require that the Retail Member Organization exercise due diligence to assure that entry of a Retail Order is in compliance with the proposed rule, prior to entry of that Retail Order. In addition, the Retail Member Organization must monitor whether the Retail Order meets the requirements of the proposed rule.

If the Retail Member Organization represented the Retail Order from another broker-dealer, then the Retail Member Organization must have adequate supervisory procedures to assure that the Retail Order meets the proposed definition. Every year, the Retail Member Organization must obtain from each broker-dealer a written representation that the Retail Orders the broker-dealer sends comply with the proposed rule and must monitor the broker-dealer's order flow to meet the requirements of the proposed rule.

Retail Order Interactions

Under the proposal, a Retail Member Organization submitting a Retail Order could choose one of three ways for the Retail Order to interact with available contra-side interest. First, a Retail Order could interact only with available contra-side Retail Price Improvement Orders. The Exchange would label this a Type 1 Retail Order and such orders would not interact with other available contra-side interest in Exchange systems or route to other markets. Portions of a Type 1 Retail Order that are not executed would be cancelled.

Second, a Retail Order could interact first with available contra-side Retail Price Improvement Orders and any remaining portion would be executed as a non-routable Regulation NMS-compliant Immediate or Cancel Order.[20] The Exchange would label this a Type 2 Retail Order.

Finally, a Retail Order could interact first with available contra-side Retail Price Improvement Orders and any remaining portion would be executed as a routable NYSE Immediate or Cancel Order.[21] The Exchange would label this a Type 3 Retail Order.

Priority and Allocation

The Exchange would follow price-time priority, ranking Retail Price Improvement Orders according to price and then time of entry, without regard to the size of the order. Executions would occur at the best price that completes the incoming Retail Order, unless there was not sufficient Retail Price Improvement interest to fill such order, in which case the Retail Order would be executed at the price that results in the greatest fill for that order, consistent with its terms. If there are remaining Retail Price Improvement Orders, they would be available for further incoming Retail Orders. As noted above, Retail Orders not executed would be cancelled.

Retail Liquidity Provider Qualifications and Admission

To qualify, a member organization must be approved as a Designated Market Maker[22] or Supplemental Liquidity Provider[23] on the Exchange and demonstrate an ability to meet the requirements of a Retail Liquidity Provider. Moreover, the member organization must have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange Retail Liquidity Provider trading activity in assigned securities.[24]

A member organization must submit an application with supporting documentation to the Exchange. Thereafter, the Exchange would notify the member organization as to whether it is approved as a Retail Liquidity Provider. More than one member organization could act as a Retail Liquidity Provider for a security, and a member organization could act as a Retail Liquidity Provider for more than one security. A member organization could request the Exchange to be assigned certain securities. Once approved, the member organization must establish connectivity with relevant Exchange systems prior to trading.

The Exchange would notify a member organization in writing if the Exchange does not approve the member organization's application to be a Retail Liquidity Provider. Such member organization could request an appeal as provided below. The member organization could also reapply 90 days after the Exchange issues the disapproval notice.

Once approved as a Retail Liquidity Provider, a member organization could withdraw by providing notice to the Exchange. The withdrawal would become effective when the Exchange reassigns the securities to another Retail Liquidity Provider, but no later than 30 days after the Exchange receives the withdrawal notice. In the event that the Exchange takes longer than 30 days to reassign the securities, the withdrawing Retail Liquidity Provider would have no further obligations under the proposed rule.

Retail Liquidity Provider Requirements

The proposed rule changes would impose several requirements on Retail Liquidity Providers. First, a Retail Liquidity Provider could enter a Retail

[19] *See* Exchanges' Response Letter III. For UTP eligible securities traded on NYSE Amex, however, the Exchanges represented that the identifier will only be available through the Exchanges' proprietary data feeds until on or about October 1, 2012, at which time NASDAQ will make the identifier for UTP eligible securities available through the consolidated public market data stream. *See* email from Brendon Weiss, NYSE Euronext, to Steve Kuan, Division of Trading and Markets, Commission, dated June 26, 2012.

[20] Such order would sweep the Exchange's book without being routed to other markets, and any remaining portion would be cancelled.

[21] Such order would sweep the Exchange's book and be routed to other markets and any remaining portion would be cancelled.

[22] *See* NYSE Rule 103 and NYSE Amex Rule 103.

[23] *See* NYSE Rule 107B and NYSE Amex Rule 107B.

[24] The member organization would not be allowed to use the mnemonic or designation for non-Retail Liquidity Provider trading activities. Further, the member organization would not receive credit for trading activity as a Retail Liquidity Provider if the member organization did not use such mnemonic or designation.

Price Improvement Order electronically into Exchange systems only in its assigned securities. A Retail Liquidity Provider must maintain Retail Price Improvement Orders that are better than the PBBO at least 5% of the trading day for each assigned security.

To calculate the 5% quoting requirement, the Exchange would determine the average percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order in each assigned security during the regular trading day on a daily and monthly basis. The Exchange would use the following definitions. The ''Daily Bid Percentage'' would be calculated by determining the percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order priced higher than the best protected bid during each trading day for a calendar month. The ''Daily Offer Percentage'' would be calculated by determining the percentage of time a Retail Liquidity Provider maintains a Retail Price Improvement Order priced lower than the best protected offer during each trading day for a calendar month. The ''Monthly Average Bid Percentage'' would be calculated for each security by summing the security's ''Daily Bid Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in such month. The ''Monthly Average Offer Percentage'' would be calculated for each security by summing the security's ''Daily Offer Percentages'' for each trading day in a calendar month, then dividing the resulting sum by the total number of trading days in such month.

The proposed rule changes specify that only Retail Price Improvement Orders entered through the trading day would be used when calculating the 5% quoting requirements. Further, a Retail Liquidity Provider would have an initial two-month grace period from the 5% quoting requirement, so that the Exchange would impose the 5% quoting requirements on the first day of the third consecutive calendar month after the member organization began operation as a Retail Liquidity Provider.

Penalties for Failure to Meet Requirements

The proposed rule changes provide for penalties when a Retail Liquidity Provider or a Retail Member Organization fails to meet the requirements of the rule.

If a Retail Liquidity Provider fails to meet the 5% quoting requirements in any assigned security for three consecutive months, the Exchange, in its sole discretion, may: (1) Revoke the assignment of any or all of the affected securities; (2) revoke the assignment of unaffected securities; or (3) disqualify the member organization to serve as a Retail Liquidity Provider. If the Exchange moves to disqualify a Retail Liquidity Provider's status, then the Exchange would notify, in writing, the Retail Liquidity Provider one calendar month prior to the determination. Likewise, the Exchange would notify the Retail Liquidity Provider in writing if the Exchange ultimately determined to disqualify the status of that Retail Liquidity Provider. As noted earlier, a Retail Liquidity Provider that is disqualified may appeal as provided below or reapply.

With respect to Retail Member Organizations, the Exchange could disqualify a Retail Member Organization if the Retail Orders submitted by the Retail Member Organization did not comply with the requirements of the proposed rule. The Exchange would have sole discretion to make such a determination. The Exchange would provide written notice to the Retail Member Organization when disqualification determinations are made. Similar to a disqualified Retail Liquidity Provider, a disqualified Retail Member Organization could appeal as provided below or reapply.

Appeal Process

Under the proposals, the Exchange would establish a Retail Liquidity Program Panel to review disapproval or disqualification decisions. An affected member organization would have five business days after notice to request review. If a member organization is disqualified as a Retail Liquidity Provider and has appealed, the Exchange would stay the reassignment of securities pending completion of the appeal process.

The Panel would consist of the Exchange's Chief Regulatory Officer or his or her designee, and two officers of the Exchange as designated by the co-head of U.S. Listings and Cash Execution. The Panel would review the appeal and issue a decision within the time frame prescribed by the Exchange. The Panel's decision would constitute final action by the Exchange, and the Panel could modify or overturn any Exchange action taken under the proposed rule.

III. Comment Letters and the Exchanges' Responses

As noted above, the Commission received a total of 32 comment letters concerning the NYSE proposal and 7 comment letters concerning the NYSE Amex proposal, including letters submitted after the Commission published the Order Instituting Proceedings and Notice of Amendments No. 2. Several commenters expressed support for some or all elements of the Exchanges' proposed Program.[25] For instance, one commenter expressed general support for the proposals[26] and another commenter offered support for the Exchanges' efforts to enhance price competition for retail customer order flow.[27] Another commenter was supportive of the proposals to the extent they promoted transparency, competition, efficiency, and greater investor choice in the capital markets.[28] Two other commenters expressed broad support for the proposals' potential to benefit individual retail investors.[29]

However, a number of commenters raised concerns about the proposed rule changes. The main areas of concern were: (1) The time and manner of the Commission's action on the proposed rule changes, given the potential impact on overall market structure; (2) the proposals' impact on the Sub-Penny Rule; (3) whether the proposals impede fair access; and (4) whether the proposals implicate rules and standards relating to best execution and order protection.

1. Time and Manner of Commission Action

Several commenters requested that the Commission delay taking action on the proposals until the Commission has had additional time to examine the proposals' potential impact on market structure.[30] For example, several commenters stated that the issues raised by the proposals should be considered through Commission rulemaking, rather than through a self-regulatory organization's proposed rule change, because of the proposals' impact on the Sub-Penny Rule[31] as well as the

[25] *See* Johannes Letter; Knight Letter I; Angel Letter; TD Ameritrade Letter; UBS Letter; Dercks Letter; and BATS Letter.

[26] *See* TD Ameritrade Letter (stating that the proposals are ''quite appealing'' to the interests of ''fair and transparent markets that benefit retail investors'' although there were still specific issues to be addressed).

[27] *See* BATS Letter.

[28] *See* UBS Letter.

[29] *See* Johannes Letter and Dercks Letter.

[30] In contrast, one commenter requested the Commission to expedite approval of the proposals. *See* Johannes Letter. Other commenters did not address issues that specifically related to the proposals but rather offered general comments about market structure, particularly computer or high frequency trading. *See* Wuepper Letter; Fischer Letter; Cook Letter; Voorhies Letter; Joseph Letter; Basic Letter; and Jelsness Letter.

[31] *See* Knight Letter I; SIFMA Letter I; SIFMA Letter II; and STA Letter.

competitive landscape of the markets.[32] Commenters questioned whether the standard action period applicable to self-regulatory organizations' proposed rule changes was enough time for the Commission to analyze relevant data and sufficiently consider the effects the proposals might have on the equities markets.[33] Another commenter did not expressly oppose Commission approval of the proposals on a pilot basis, but cautioned that to the extent the Commission approves an effective reduction in the minimum price variation, or ''tick size,'' below $0.01, the Commission should do so on the basis of industry-wide pilot studies that test various tick sizes and publish the studies' data for public review and comment.[34] Lastly, a commenter requested that the Commission consider disapproving the proposals while it carefully studies the potential market impact of the Program; this commenter felt such delay was warranted in this case because it felt the Program is not designed to cure a market deficiency, but rather to help the Exchanges acquire market share.[35]

The Exchanges responded that the proposed Program is designed to attract retail order flow to the Exchanges by competing with the current practices of broker-dealers that internalize much of the market's retail order flow. Additionally, the Exchanges responded that the fees and credits they would implement as part of the Program would be similar to those used by investors in the over-the-counter (''OTC'') market with retail order flow providers.[36]

2. Impact on the Sub-Penny Rule

A number of commenters raised concerns about the proposed Program's use of sub-penny orders, and its implications with respect to the Sub-Penny Rule.[37] One commenter noted that, by accepting and ranking non-displayed orders in sub-penny increments, the proposals could discourage liquidity by allowing ''dark'' liquidity to step ahead of posted limit orders for only a trivial amount.[38] The same commenter observed that allowing non-displayed liquidity to gain an execution advantage over displayed limit orders for trivial per share amounts could result in wider bid-ask spreads.[39]

Other commenters articulated similar concerns about protecting public limit orders and public price discovery,[40] particularly with respect to institutional and retail investors,[41] and one commenter stated that the proposals might lead to a potential increase in sub-penny trading.[42] In addition, one commenter pointed out the potential technical systems and capacity issues that could result from effectively reducing the minimum price increment from $0.01 to $0.001, thereby substantially increasing the number of price points between each dollar level.[43] Lastly, a commenter stated that any study of the data generated while the Program was operating on a limited pilot basis would not be sufficiently meaningful in assessing the broader market structure impact of these types of proposals.[44]

In response, the Exchanges stated that currently, OTC market makers internalize retail order flow at negotiated sub-penny prices and not at their publicly displayed quotes. The Exchanges agree that the market structure impact of sub-penny executions may warrant further Commission consideration. However, the Exchanges also believe that the Program does not raise any new issues with respect to sub-penny executions; rather it simply seeks to compete for retail order flow within the current market landscape, while offering potentially greater price improvement to retail investors and transparency to the marketplace.

The Exchanges also rejected commenters' concerns about non-displayed liquidity stepping ahead of displayed limit orders for insignificant amounts. According to the Exchanges, the Commission's guidance with respect to the Sub-Penny Rule concerns market professionals using displayed sub-penny orders to gain execution priority over customer limit orders. The Exchanges distinguished the proposed Program by noting that the Retail Liquidity Identifier would not be priced and Retail Price Improvement Orders would not be displayed. Accordingly, the Exchanges stated that the Program would limit its sub-penny activity to sub-penny executions. Similarly, in response to comments about the consequences of moving the ''tick size'' to $0.001, the Exchanges stated that the ''tick size'' would not in fact be altered because the sub-penny components of the Program would not be displayed.

Finally, in response to the concern that the proposals might lead to more sub-penny trading, the Exchanges stated that they do not anticipate such a result because they believe instead that the proposals would likely reallocate existing retail order flow from internalizing broker-dealers to the Exchanges. Moreover, the Exchanges stated that, if the proposals led to additional sub-penny executions for retail order flow, it would benefit retail investors by creating additional price competition, and, therefore, greater opportunity for price improvement, for such retail order flow.

3. Fair Access

Commenters also highlighted several elements of the Program that potentially implicate the Commission's rules governing fair access. First, several commenters raised questions about whether the proposals would, in essence, create a private market. Some commenters wrote that the proposed segmentation of retail order flow could amount to unfair discrimination,[45] for example, by creating trading interest that would not be accessible by institutional investors.[46] One commenter suggested that the proposed Program would be akin to operating a limited access dark pool that could have the effect of creating a two-tiered market.[47]

Some commenters also took issue with the proposals to the extent that the

[32] *See* Knight Letter I; Hudson River Trading Letter; Knight Letter II; and STA Letter.

[33] *See* Knight Letter I and SIFMA Letter I.

[34] *See* Angel Letter. Expressing similar general concerns but not offering specific comment on the proposal, one commenter urged the Commission to exercise caution when considering expert testimony offered by for-profit industry participants as it relates to market structure regulation. *See* Themis Letter.

[35] *See* Knight Letter II.

[36] *See also* UBS Letter (stating that the proposed programs would not necessarily lead to more sub-penny activity, but would rather shift some of that activity from the over-the-counter markets to the Exchanges).

[37] The Sub-Penny Rule is codified at 17 CFR 242.612. *See supra* note 7.

[38] *See* Angel Letter.

[39] *See id.*

[40] *See* Voorhies Letter; Joseph Letter; Fournier Letter; PairCo Letter; Wollin Letter; Great Mountain Capital Letter; Koch Letter; CFA Letter I; Green Letter; Bright Trading Letter; TD Ameritrade Letter; Kenney Letter; Parsons Letter; and BATS Letter.

[41] *See* TD Ameritrade Letter; Knight Letter II; CFA Letter II; and SIFMA Letter II.

[42] *See* TD Ameritrade Letter.

[43] *See* Knight Letter I. In a second comment letter, Knight asked whether eliminating the proposed Retail Liquidity Identifier might remedy the Regulation NMS issues it felt could be implicated by the dissemination of a message that would signal the presence of sub-penny quotes on the Exchanges' books. *See* Knight Letter II.

[44] *See* Knight Letter II.

[45] *See* CFA Letter I and Hudson River Trading Letter. At least one commenter took the opposite view and supported market participant segmentation programs so long as such segmentation is done in an objective and transparent manner. *See* UBS Letter.

[46] *See* SIFMA Letters I and II; *see also* STA Letter (expressing concern over the program's differentiation between retail and institutional order flow, particularly since some individual investors may utilize managed funds—which may not be classified as ''Retail Member Organizations''—as an investment vehicle).

[47] *See* Knight Letter I.

Retail Liquidity Identifier would be disseminated only through a proprietary data feed rather than the public market data stream.[48] These commenters felt that limiting dissemination of the Retail Liquidity Identifier to a proprietary data feed could unfairly harm small firms who do not pay for the proprietary feed[49] or create a private, two-tiered market where those who can afford the proprietary feed can view and potentially obtain the best prices.[50] Another commenter suggested that the Program could undermine the Commission's policies underlying the Quote Rule because the Exchanges would not be displaying the ''best'' orders they receive, *i.e.,* the sub-penny Retail Price Improvement Orders that the Exchanges would accept and rank under the Program.[51]

The Exchanges responded that the proposals do not create a fair access issue because, in their view, the Retail Liquidity Identifier does not meet the definition of ''quotation'' under Regulation NMS. In essence, the Exchanges believe that the Retail Liquidity Identifier cannot be considered a ''bid'' or ''offer'' because the identifier would not contain a price. According to the Exchanges, there would be no fairness issue in signifying the presence of liquidity by distributing the Retail Liquidity Identifier through a proprietary data feed, especially because participation in the proposed program would be discretionary. However, in response to concerns about the dissemination of the Retail Liquidity Identifier, the Exchanges represented in their third consolidated response letter that the Retail Liquidity Identifier would be available through the consolidated public market data stream immediately upon implementation of the Program, if approved.

Another issue raised by the commenters relates to the clarity and transparency of certain defined terms in the proposals. Specifically, some commenters expressed concern that, under the proposals, the Exchanges would have too much discretion to certify or approve Retail Member Organizations and Retail Liquidity Providers, creating the potential for discriminatory treatment.[52] Two commenters also stated that the definition of ''Retail Order,'' which relies on the representation of the broker sending the order, may not be sufficiently clear.[53] One commenter noted that the definition may impose too great of an administrative burden on participants in the Program, as participants would be required to surveil their Retail Orders to ensure that they comply with the proposed requirements.[54] In response to the Exchanges' Amendments No. 2, which narrowed the definition of ''Retail Order,'' one commenter posited that the re-proposed definition was vague because the phrase providing that orders ''cannot originate from a trading algorithm or any computerized methodology'' is unclear in scope.[55]

The Exchanges responded that they would continually monitor and evaluate all aspects of the Retail Member Organization certification process during the pilot period. The Exchanges disagreed that the definition of ''Retail Order'' and the Retail Member Organization certification process are unclear or not subject to enforcement. According to the Exchanges, the authentication and certification procedures, together with the requirement that Retail Member Organizations have written policies and procedures to assure that they only submit qualifying retail orders, would result in reliable identification and segmentation of retail order flow. The Exchanges also did not believe there were ambiguities in defining a Retail Order to exclude orders originating from a trading algorithm or computerized methodology; however, the Exchanges committed to providing interpretive guidance to any firms that have questions about the definition. Finally, the Exchanges stated that the Program would be subject to regulatory review by FINRA pursuant to a regulatory services agreement with the Exchanges.

Commenters also raised issues related to access fees. One commenter suggested that the appropriate amount of access fees would need to be revisited if the ''tick size'' is reduced from $0.01 to $0.001 because the maximum allowable fee of $0.003 per share would significantly increase in relation to the minimum pricing increment.[56] Another commenter noted that the proposals could open the door to revisiting whether access fees may be included in quotes, assuming the Program leads to sub-penny quotations.[57] Finally, one commenter questioned whether the proposals would result in true price competition because non-Retail Liquidity Providers would likely be charged higher access fees for executions with Retail Orders than Retail Liquidity Providers, and would most likely not be able to quote as aggressively as Retail Liquidity Providers as a result.[58]

The Exchanges responded that approval of the proposals does not require reexamination of any access fee issue. The Exchanges noted that there would be no visible prices disseminated as part of the program and expressed the view that the proposals did not contemplate ''quotes'' subject to the Commission's fair access rules. Given that the proposals did not contemplate ''quotes,'' the Exchanges also contended that a broker's obligations under Regulation NMS would not require it to route a retail order to the Exchanges to interact with a Retail Price Improvement Order. Finally, the Exchanges believe that the proposals comport with the principles behind the Commission's access rules because they intend to welcome broad participation in the Program.

4. Best Execution

Several commenters took the position that the Program would complicate broker-dealers' best execution duties. According to one commenter, the Exchanges' dissemination of the Retail Liquidity Identifier would raise a number of issues, including whether broker-dealers would be required to route to the Exchanges when they see a Retail Liquidity Identifier; whether, if other exchanges were to adopt similar proposals and disseminate flags similar to the Retail Liquidity Identifier, a broker-dealer would be required to sweep all liquidity inside the spread before executing at the NBBO; whether the Exchanges would be required to route Retail Orders they receive to other market centers if those away markets offered the possibility of further price improvement; and whether broker-dealers would be required to subscribe to the Exchanges' proprietary feeds to be able to receive the Retail Liquidity Identifier.[59]

Another commenter questioned whether, if other exchanges were to adopt competing programs and disseminate flags similar to the Retail

[48] *See* SIFMA Letters I and II and BATS Letter.

[49] *See* SIFMA Letter I.

[50] *See* BATS Letter.

[51] *See* Knight Letter II; *see also* SIFMA Letter II (stating that the Identifier would constitute a ''de facto'' quote, and contending that the Commission should address the Identifier, along with actionable indications of interest, through Commission rulemaking).

[52] *See* Hudson River Trading Letter; BATS Letter; and SIFMA Letter II.

[53] *See* Hudson River Trading Letter and Knight Letter I.

[54] *See* Knight Letter I.

[55] *See* SIFMA Letter II.

[56] *See* Knight Letter I.

[57] *See* SIFMA Letter I.

[58] *See* BATS Letter.

[59] *See* Knight Letter I; *see also* SIFMA Letter II (raising similar questions about broker-dealers' best execution obligations).

Liquidity Identifier over their proprietary feeds, a broker-dealer would be required to subscribe to each proprietary feed in order to fill its best execution obligations.[60] Relatedly, another commenter stated that the proposals would result in confusion among broker-dealers unsure of how the dissemination of the Retail Liquidity Identifier would affect their smart order routing.[61] Finally, one commenter suggested that FINRA's best execution and interpositioning rules would need to be updated to reflect the fact that Retail Liquidity Identifiers would be widely disseminated yet not accessible by non-retail clients.[62]

The Exchanges responded that they believe the proposals do not raise any best execution challenges that are not already confronted by broker-dealers in the current market environment. The Exchanges stated that best execution is a facts and circumstances determination and requires many factors to be considered.[63]

One commenter also raised related concerns about the proposals' potential impact on broker-dealer obligations under FINRA Rule 5320, also known as the ''Manning'' rule.[64] FINRA Rule 5320 generally prohibits broker-dealers from trading ahead of their customer orders. The commenter noted that firms that both offer Retail Price Improvement Orders and accept customer orders will likely find themselves in a position where they must fill the customer order at a loss, assuming their Retail Price Improvement Orders get executed before the customer order.[65]

In response to this comment, the Exchanges stated that the Manning obligations of a Retail Liquidity Provider would be no different from the obligations on an OTC market maker that internalizes orders. The Exchanges stated that OTC market makers commonly rely on the ''no-knowledge'' exception contained in Supplementary Material .02 of FINRA Rule 5320 to separate their proprietary trading from their handling of customer orders. The Exchanges expressed their view that this exception should be equally applicable to Retail Liquidity Providers participating in the Program.

IV. Discussion and Commission Findings

After careful review of the proposals, the comment letters received, and the Exchanges' responses, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule changes, subject to their terms as pilots, are consistent with Section 6(b)(5) of the Act,[66] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the Program, as it is proposed on a pilot basis, is consistent with the Act because it is reasonably designed to benefit retail investors by providing price improvement to retail order flow. The Commission also believes that the Program could promote competition for retail order flow among execution venues, and that this could benefit retail investors by creating additional price improvement opportunities for their order flow. Currently, most marketable retail order flow is executed in the OTC markets, pursuant to bilateral agreements, without ever reaching a public exchange. The Commission recently noted that ''a very large percentage of marketable (immediately executable) order flow of individual investors'' is executed, or ''internalized,'' by broker-dealers in the OTC markets.[67] A recent review of the order flow of eight retail brokers revealed that nearly 100% of their customer market orders were routed to OTC market makers.[68] The same review found that such routing is often done pursuant to arrangements under which retail brokers route their order flow to certain OTC market makers in exchange for payment for such order flow.[69] To the extent that the Program may provide price improvement to retail orders that equals what would be provided under such OTC internalization arrangements, the Program could benefit retail investors. To better understand the Program's potential impact, data concerning such potential investor benefit, including the level of price improvement provided by the Program, will be submitted by the Exchanges and would be reviewed by the Commission prior to any extension of the Program beyond the proposed one-year pilot term, or permanent approval of the Program.

The Program proposes to create additional price improvement opportunities for retail investors by segmenting retail order flow on the Exchanges and requiring liquidity providers that want to interact with such retail order flow to do so at a price at least $0.001 per share better than the Protected Best Bid or Offer. As noted above, some commenters questioned the fairness of treating retail order flow differently from other order flow on an exchange by offering price improvement opportunities only to retail orders. Commenters also raised several concerns relating to the way the Program proposes to define and identify retail order flow.

In this case, the Commission finds that while the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange are not designed to permit unfair discrimination.[70] The Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable

[60] *See* BATS Letter.

[61] *See* SIFMA Letters I and II.

[62] *See* UBS Letter.

[63] *See* Exchanges' Response Letter I (citing Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000) (Disclosure of Order Execution and Routing Practices Adopting Release)).

[64] *See* Knight Letter I.

[65] *See id.* In an example offered by the commenter, assume the NYSE best bid and offer is 10.01 x 10.02. A non-Retail Liquidity Provider, that also handles retail customer orders, posts a Retail Price Improvement bid at $10.015 for 500 shares. The Retail Price Improvement order executes against an eligible Retail Order, and buys 500 shares at $10.015. If that non-Retail Liquidity Provider also holds a customer limit order to buy 500 shares at $10.01, the commenter states that the non-RLP would be obligated, under the current Manning rule, to sell the 500 shares to its client at $10.01—losing $0.005 per share in the process.

[66] 15 U.S.C. 78f(b)(5).

[67] *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594, 3600 (Jan. 21, 2010) (''Concept Release on Equity Market Structure'').

[68] *See id.*

[69] *See id.*

[70] The comment letters and the Exchanges' responses contained extensive discussion of whether the Program's proposed Retail Liquidity Identifier constitutes a ''quote'' which would be subject to Rule 610 of Regulation NMS. That rule, known as the ''Fair Access Rule,'' contains a similar prohibition on unfair discrimination. The Commission finds that the Program is not unfairly discriminatory under both Section 6(b)(5) of the Act and Rule 610 of Regulation NMS. Because the Commission has determined that the Program is not unfairly discriminatory pursuant to Rule 610, it need not determine whether the Retail Liquidity Identifier is a ''quote'' for purposes of Rule 610.

by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.[71] The Commission has further recognized that, because of this distinction, liquidity providers are generally more inclined to offer price improvement to less informed retail orders than to more informed professional orders.[72] Absent opportunities for price improvement, retail investors may encounter wider spreads that are a consequence of liquidity providers interacting with informed order flow. By creating additional competition for retail order flow, the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Certain commenters also expressed concern that the Program could create a private market or otherwise impede fair access.[73] In this regard, the Commission notes that the Retail Liquidity Identifier will be disseminated through the consolidated public market data stream, and thus be widely viewable by market participants, and that members of the Exchanges that would not otherwise participate as Retail Liquidity Providers would be able to participate in the Program by submitting Retail Price Improvement Orders.

As noted above, certain commenters questioned the fairness of preventing institutional investors from submitting Retail Orders, and thus receiving price improvement on their orders.[74] In this regard, the Commission notes that the Program might create a desirable opportunity for institutional investors to interact with retail order flow that they are not able to reach currently. Member organizations that are not Retail Liquidity Providers can seek to interact with Retail Orders by submitting Retail Price Improvement Orders. Today, institutional investors often do not have the chance to interact with marketable retail orders that are executed pursuant to internalization arrangements. Thus, institutional investors, if they participate in the Program by submitting Retail Price Improvement Orders, may be able to reduce their possible adverse selection costs by interacting with retail order flow previously unavailable to them.

The Commission does not share the concern expressed by several commenters that the Program will cause a major shift in market structure. Instead, the Commission believes the Program should closely replicate the trading dynamics that exist in the OTC markets and will simply present another competitive venue for retail order flow execution. While some commenters stated that the Program would potentially increase sub-penny trading, the Commission believes that the Program will likely reallocate existing retail order flow from the OTC markets to the Exchanges, and is not likely to alter the incentives for market participants to post limit orders in a material way, given that liquidity providers already interact with most retail order flow in non-displayed markets.[75] In this regard, however, the Commission notes that it is approving the Program on a pilot basis, and will monitor the Program throughout the pilot period for its potential effects on public price discovery, and on the broader market structure.

When the Commission is engaged in rulemaking or the review of a rule filed by a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[76] As discussed above, the Commission believes that this Program will promote competition for retail order flow, by allowing Exchange members, either as Retail Liquidity Providers, or on an ad hoc basis, to submit Retail Price Improvement Orders to interact with Retail Orders. Such competition may promote efficiency by facilitating the price discovery process. Moreover, the Commission does not believe that the Program will have a significant effect on market structure, or will create any new inefficiencies in current market structure. Finally, to the extent the Program is successful in attracting retail order flow, it may generate additional investor interest in trading securities, thereby promoting capital formation.

The Commission also believes that the Program is sufficiently tailored to provide the benefits of potential price improvement only to bona fide retail order flow originating from natural persons.[77] The Commission finds that the Program provides an objective process by which a member organization could become a Retail Member Organization or a Retail Liquidity Provider, and for appropriate oversight by the Exchanges to monitor for continued compliance with the terms of these provisions. The Exchanges have limited the definition of Retail Order to an agency order that originates from a natural person and not a trading algorithm or any other computerized methodology.

[71] *See* Concept Release on Equity Market Structure, *supra* note 67; *see also* Securities Exchange Act Release No. 64781 (June 30, 2011), 76 FR 39953 (July 7, 2011) (approving a program proposed by an options exchange that would provide price improvement opportunities to retail orders based, in part, on questions about execution quality of retail orders under payment for order flow arrangements in the options markets).

While certain commenters expressed concern that institutional investors, including those that invest money on behalf of individual retail clients, would not be eligible to qualify as Retail Member Organizations and submit Retail Orders, the Commission notes that institutional investors tend to be more informed than retail investors. *See supra* note 46.

[72] *See* Securities Exchange Act Release No. 64781 (June 30, 2011), 76 FR 39953 (July 7, 2011) (noting that ''it is well known in academic literature and industry practice that prices tend to move against market makers after trades with informed traders, often resulting in losses for market makers,'' and that such losses are often borne by uninformed retail investors through wider spreads (citing H.R. Stoll, ''The supply of dealer services in securities markets,'' *Journal of Finance* 33 (1978), at 1133–51; L. Glosten & P. Milgrom, ''Bid ask and transaction prices in a specialist market with heterogeneously informed agents,'' *Journal of Financial Economics* 14 (1985), at 71–100; and T. Copeland & D. Galai, ''Information effects on the bid-ask spread,'' *Journal of Finance* 38 (1983), at 1457–69)).

[73] *See supra* notes 45 through 51 and accompanying text.

[74] *See supra* notes 45 through 47 and accompanying text.

[75] For the same reasons, the Commission does not believe that the Program will create any best execution challenges that are not already present in today's markets. A broker's best execution obligations are determined by a number of facts and circumstances, including (1) The character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communications); (2) the size and type of transaction; (3) the number of markets checked; (4) accessibility of the quotation; and (5) the terms and conditions of the order which result in the transaction. *See* FINRA Rule 5310; *see also* Disclosure of Order Execution and Routing Practices Adopting Release, *supra* note 633. A broker would consider the Program when conducting this analysis.

Furthermore, with respect to the scope of FINRA Rule 5320 (the ''Manning'' rule), the Commission notes that the Manning obligations of a Retail Liquidity Provider likely would not be appreciably different from the current obligations of an OTC market maker that internalizes orders.

[76] *See* 15 U.S.C. 78c(f).

[77] In addition, the Commission believes that the Program's provisions concerning the certification, approval, and potential disqualification of Retail Member Organizations and Retail Liquidity Providers are not inconsistent with the Act. These provisions, which contain appeal procedures for adverse decisions against those who seek to become Retail Member Organizations or who are disqualified from their status as such, are substantially similar to provisions in the Exchanges' rules establishing the Supplemental Liquidity Provider Program. *See* NYSE Rule 107B(j)–(k) and NYSE Amex Rule 107B(i)–(j).

Furthermore, a Retail Order must be submitted by a Retail Member Organization that is approved by the Exchanges. In addition, Retail Member Organizations would be required to maintain written policies and procedures to help ensure that they designate as Retail Orders only those orders which qualify under the Program. If a member's application to become a Retail Member Organization or a Retail Liquidity Provider is denied by the Exchange, that member may appeal that determination or re-apply. Similarly, a Retail Liquidity Provider that is disqualified for failing to meet its quoting requirements may appeal or re-apply to the Program. The Commission believes that these standards should help ensure that only retail order flow is submitted into the Program and thereby promote just and equitable principles of trade and protect investors and the public interest, while also providing an objective process through which members may become Retail Member Organizations or Retail Liquidity Providers. The Commission also notes that the Exchanges have represented that they would continually monitor all aspects of the Retail Member Organization certification process during the pilot period, and that the Program would be subject to regulatory review by FINRA pursuant to a regulatory services agreements with the Exchanges.

In addition, the Commission finds that the Program's proposed dissemination of a Retail Liquidity Identifier would increase the amount of pricing information available to the marketplace and is consistent with the Act. The identifier would be disseminated through the consolidated public market data stream [78] to advertise the presence of a Retail Price Improvement Order with which Retail Orders could interact. The identifier would reflect the symbol for a particular security and the side of the Retail Price Improvement Order interest, but it would not include the price or size of such interest. The identifier would alert market participants to the existence of a Retail Price Improvement Order and should provide market participants with more information about the availability of price improvement opportunities for retail orders than is currently available.[79] Given the benefits of adding this information to the marketplace, the Commission believes that the Identifier is an appropriate part of the Program.[80]

Lastly, some commenters questioned whether the exchange rule filing process was an appropriate means to introduce the Program, given the Program's impact on broader market structure, and the limited timeframe in which the Commission would be able to consider the Program and comments thereto. Given that the Program involves modifying the Exchanges' trading rules to create new order types and categories of members, however, the Commission believes that the Program was appropriately proposed through the rule filing process pursuant to Section 19(b)(1) of the Act. In addition, the Commission does not believe that the Program is likely to significantly impact market structure because the Program is designed to replicate the trading dynamics that exist in the OTC markets and will simply present another competitive venue for retail order flow execution.

Furthermore, the Commission notes that it is approving the Program on a pilot basis. Approving the Program on a pilot basis will allow the Exchanges and market participants to gain valuable practical experience with the Program during the pilot period. This experience should allow the Exchanges and the Commission to determine whether modifications to the Program are necessary or appropriate prior to any Commission decision to approve the Program on a permanent basis. The Exchanges also have agreed to provide the Commission with a significant amount of data that should assist the Commission in its evaluation of the Program. Specifically, the Exchanges have represented that they ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' The Commission expects that the Exchanges will monitor the scope and operation of the Program and study the data produced during that time with respect to such issues, and will propose any modifications to the Program that may be necessary or appropriate.

The Commission also welcomes additional comments, and empirical evidence, on the Program during the pilot period to further assist the Commission in its evaluation of the Program.[81] The Commission notes that any permanent approval of the Program would require a proposed rule change by the Exchanges, and such rule change will provide an opportunity for public comment prior to further Commission action.[82]

V. Exemption From the Sub-Penny Rule

Pursuant to its authority under Rule 612(c) of Regulation NMS,[83] the Commission hereby grants each Exchange a limited exemption from the Sub-Penny Rule to operate the Program. For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. The exemptions shall operate for a period of 12 months, coterminous with the effectiveness of the proposed rule changes approved today.

When the Commission adopted the Sub-Penny Rule in 2005, it identified a

[78] Certain commenters expressed concerns that the original proposals' plan to limit dissemination of the Retail Liquidity Identifier to the Exchanges' proprietary data feeds was unfair. *See supra* notes 48 through 50 and accompanying text. In this regard, the Commission notes that the Exchanges have committed to making the Retail Liquidity Identifier immediately available through the consolidated public market data stream for securities listed on NYSE and NYSE Amex, and have represented that the Retail Liquidity Identifier for UTP eligible securities should be available through the consolidated public market data stream in on or about October 1, 2012. *See supra* note 19.

[79] As noted above, certain commenters questioned whether dissemination of the Retail Liquidity Identifier would be compatible with the Quote Rule. *See supra* note 51. In connection with the proposals, the Exchanges have requested that the staff of the Commission not recommend enforcement action to the Commission, either against the Exchanges or Retail Liquidity Providers, under the Quote Rule relating to the kind of information disseminated through Retail Liquidity Identifier. *See* Letter from Janet M. McGinness, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Robert Cook, Director, Division of Trading and Markets, dated April 11, 2012. The staff has determined to grant the Exchanges' No Action request pursuant to a letter which is also being issued today. *See* Letter from David Shillman, Associate Director, Division of Trading and Markets, to Janet McGinness, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, dated July 3, 2012.

[80] Although one commenter stated that the Retail Liquidity Identifier should be eliminated from the Program, as it was ''tantamount to displaying sub-penny quotations in the lit markets,'' *see* Knight Letter II, for the reasons discussed below, the Commission believes that the benefits of the Program justify granting exemptive relief from Rule 612(c) of Regulation NMS. *See also* SIFMA Letter II (urging the Commission to address sub-penny quoting through the rulemaking process rather than an exemptive request specific to a market participant).

[81] For instance, one commenter noted the need for market participants to consider the impact that the Program will have on a number of factors, including trading technologies and capacity, operational costs, execution quality, liquidity, and gaming. *See* Knight Letter I. The Commission would welcome data from market participants on these topics, as well as any others, during the pilot period.

[82] One comment suggested that the Program should only be considered in tandem with industry-wide pilot studies on tick size. *See* Angel Letter. As discussed above, the Commission believes that the proposals are properly considered through the rule filing process, and expects to monitor and study data produced during the Program's pilot term.

[83] 17 CFR 242.612(c).

variety of problems caused by sub-pennies that the Sub-Penny Rule was designed to address:

- If investors' limit orders lose execution priority for a nominal amount, investors may over time decline to use them, thus depriving the markets of liquidity.
- When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule could be undermined.
- Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.
- Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.
- Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[84]

At the same time, the Commission ''acknowledge[d] the possibility that the balance of costs and benefits could shift in a limited number of cases or as the markets continue to evolve.'' [85] Therefore, the Commission also adopted Rule 612(c), which provides that the Commission may grant exemptions from the Sub-Penny Rule, either unconditionally or on specified terms and conditions, if it determined that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The Commission believes that the Exchanges' proposal raises such a case. As described above, under the current market structure, few marketable retail orders in equity securities are routed to exchanges. The vast majority of marketable retail orders are internalized by OTC market makers, who typically pay retail brokers for their order flow. Retail investors can benefit from such arrangements to the extent that OTC market makers offer them price improvement over the NBBO. Price improvement is typically offered in sub-penny amounts.[86] An internalizing broker-dealer can offer sub-penny executions, provided that such executions do not result from impermissible sub-penny orders or quotations. Accordingly, OTC market makers typically select a sub-penny price for a trade without quoting at that exact amount or accepting orders from retail customers seeking that exact price. Exchanges—and exchange member firms that submit orders and quotations to exchanges—cannot compete for marketable retail order flow on the same basis, because it would be impractical for exchange electronic systems to generate sub-penny executions without exchange liquidity providers or retail brokerage firms having first submitted sub-penny orders or quotations, which the Sub-Penny Rule expressly prohibits.

The limited exemptions granted today should promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and its reduced depth at the inside quotation. Furthermore, while the Commission remains concerned about providing enough incentives for market participants to display limit orders, the Commission does not believe that granting this exemption (and approving the accompanying proposed rule changes) will reduce such incentives. Market participants that display limit orders currently are not able to interact with marketable retail order flow because it is almost entirely routed to internalizing OTC market makers that offer sub-penny executions. Consequently, enabling the Exchanges to compete for this retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

The exemptions being granted today are limited to a one-year pilot. The Exchanges have stated that ''sub-penny trading and pricing could potentially result in undesirable market behavior,'' and therefore they will ''monitor the Program in an effort to identify and address any such behavior.'' [87] Furthermore, the Exchanges have represented that they ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [88] The Commission expects to review the data and observations of the Exchanges before determining whether and, if so, how to extend these exemptions from the Sub-Penny Rule.[89]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[90] that the proposed rules changes (SR–NYSE–2011–55; SR–NYSEAmex–2011–84), as modified by Amendments Nos. 1 and 2, be and hereby are, approved on a one-year pilot basis.

It is also hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is given a limited exemption from Rule 612 of Regulation NMS allowing it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in the manner described in the proposed rule changes above, on a one-year pilot basis coterminous with the effectiveness of the proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–16769 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[84] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37551–52 (June 29, 2005).

[85] *Id.* at 37553.

[86] When adopting the Sub-Penny Rule, the Commission considered certain comments that asked the Commission to prohibit broker-dealers from offering sub-penny price improvement to their customers, but declined to do so. The Commission stated that ''trading in sub-penny increments does not raise the same concerns as sub-penny quoting'' and that ''sub-penny executions due to price improvement are generally beneficial to retail investors.'' *Id.* at 37556.

[87] Amended Request for Sub-Penny Rule Exemption, *supra* note 8, at 4, n. 6.

[88] *Id.*

[89] In particular, the Commission expects the Exchanges to observe how maker/taker transaction charges, whether imposed by the Exchanges or by other markets, might impact the use of the Program. Market distortions could arise where the size of a transaction rebate, whether for providing or taking liquidity, is greater than the size of the minimum increment permitted by the Program ($0.001 per share).

[90] 15 U.S.C. 78s(b)(2).

[91] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67345; File No. SR–NYSE–2012–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Exchange Rules Related to Floor Official Duties and Responsibilities in the Exchange's Marketplace

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Exchange Rules related to Floor Official duties and responsibilities in the Exchange's marketplace. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain Exchange Rules pertaining to the duties and responsibilities of Floor Officials in the Exchange marketplace.

The role of the Floor Official evolved out of the self-regulatory scheme of the Securities Exchange Act of 1934, as amended (the ''Act'').[3] A number of Exchange Rules specify involvement in the marketplace by Floor Officials, senior-level Floor Officials (*i.e.,* Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors), or both.[4]

Typically, the Floor Official's role on the Floor of the Exchange involves the consideration of requests to execute a particular kind of transaction or the supervision of specified trading situations. In addition to their formal role prescribed by the Exchange rules, Floor Officials also provide a more general level of oversight to the marketplace on a day-to-day basis.

Given the evolution of the equities markets away from manual executions and manual enforcement of rules toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic, many of the trading procedures and situations originally requiring Floor Officials involvement have been automated; in other cases, the Floor Official approval has become *pro forma* rather than substantive. In light of this, the Exchange determined that several Exchange Rules should be amended with respect to the duties and responsibilities once assigned to Floor Officials to better comport with today's Exchange market structure.

Proposed Amendments

NYSE Rule 122 provides that, to avoid unfair allocation of securities traded, no member or member organization shall maintain with more than one broker on the Exchange market orders or orders at the same price for the purchase or sale of the same security for the account of the same principal unless permission has been obtained from a Floor Official. The Exchange proposes to amend the rule to remove this approval as a Floor Official function and therefore ban this practice outright.

[3] 15 U.S.C. 78f.

[4] *See* Exchange Rules 46 and 46A (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governors).

NYSE Rule 123D addresses openings and halts in trading. The Exchange seeks to make a technical amendment to this rule to remove any reference to ''Floor Official Approval Form #3,'' as this form no longer exists and the information it captured is now maintained in the Floor Official Request Tracking Engine (''FORTÉ'').

Finally, the Exchange proposes amending Rule 128B, which prescribes the procedures for the publication of changes, cancellations or other errors on the consolidated tape (the ''Tape''). Specifically, Rule 128B.10 requires Floor Official approval to change or correct a transaction that previously appeared on the Tape, cancel a transaction that previously appeared on the Tape and that has been agreed to by all buyers and sellers, and publish a transaction omitted from the Tape (*i.e.,* a sold or sold last sale). In addition, Rule 128B.13 requires Floor Official approval for the publication of a correction to a transaction erroneously reported to ''a reporter'' by a party to the transaction. In the interests of maintaining the integrity of the Tape, the Exchange proposes to elevate the level of approval required under Rules 128B.10 and .13 from Floor Official to senior-level Floor Official (*i.e.,* Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors). In addition, the Exchange proposes to delete ''to a reporter'' in Rule 128B.13. Historically, Floor reporters were Exchange employees responsible for collecting and inputting transaction data into the ticker system. The position was eliminated many years ago.

Finally, Rule 128B.10 provides that, in addition to (proposed senior-level) Floor Official approval, both ''buying and selling members'' must agree to the publication of (1) A change or a correction in a transaction that previously appeared on the Tape, (2) the cancellation of a transaction which previously appeared on the Tape and which was properly rescinded, or (3) a transaction omitted from the Tape made on the Tape on the day of the transaction. The Exchange proposes to add ''or member organizations'' after ''buying and selling members.'' Rule 2 defines a ''member'' as a natural person. A significant number of Exchange member organizations, however, no longer have Floor-based members, and nearly all transactions printed to the Tape are executed by automated systems. The proposed change to Rule 128B.10 reflects the changes in the NYSE marketplace away from Floor-based members manually executing the majority of trades printed to the Tape to

more automated trading by an increasing number of non-Floor based member organizations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] 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 mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule changes support the objectives of the Act by amending and/or delegating duties and responsibilities once assigned to Floor Officials to better comport with the Exchange's current market structure and to reflect rapidly changing market technology and the development of automated systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the 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 prior to 30 days from the date on which it was filed the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will assist the Exchange in maintaining a fair and orderly market by allowing market participants who agree to cancel a transaction to do so more efficiently, thereby potentially reducing the likelihood that transactions will be printed to the Tape incorrectly. Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2012–20 and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16767 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67343; File No. SR–Phlx–2012–81]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change With Respect to the Authority of the Exchange or NASDAQ Execution Services to Cancel Orders When a Technical or System Issue Occurs on the Exchange's NASDAQ OMX PSX Facility and To Describe the Operation of an Error Account for NES

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 27, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to file with the Commission a proposal with respect to the authority of the Exchange or NASDAQ Execution Services (''NES'') to cancel orders when a technical or system issue occurs on the Exchange's NASDAQ OMX PSX facility (''PSX'') and to describe the operation of an error account for NES.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 3315 by adding a new paragraph (d) that addresses the authority of the Exchange or NES to cancel orders when a technical or systems issue occurs on PSX and to describe the operation of an error account for NES.[3] NES is the approved [sic] routing broker of PSX, subject to the conditions listed in Rule 3315. The Exchange relies on NES to provide outbound routing services from itself to routing destinations of NES (''routing destinations'').[4] When NES routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of NES, and NES arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. From time to time, however, the Exchange and NES encounter situations in which it becomes necessary to cancel orders and resolve error positions.[5]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at NES, a routing destination, or the Exchange that may cause the Exchange or NES to take steps to cancel orders if the Exchange or NES determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or NES may decide to cancel orders.

Example 1. If NES or a routing destination experiences a technical or systems issue that results in NES not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, NES or the Exchange would seek to cancel the routed orders affected by the issue.[6] For instance, if NES experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and NES or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member submitted to the Exchange on its initial order during such a situation would be honored.[7]

Example 2. If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the members' initial orders.

Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at NES, a routing destination, the Exchange, or a non-affiliate third party Routing Broker may also result in NES acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

Example A. Error positions may result from routed orders that the Exchange or NES attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, NES may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to members because of the earlier decision to cancel the

[3] NES is a facility of the Exchange. Accordingly, under Rule 3315, the Exchange is responsible for filing with the Commission rule changes and fees relating to NES's functions. In addition, the Exchange is using the phrase ''NES or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of NES or the Exchange depending on where those orders are located at the time of that decision. This filing applies only to transactions in cash equities.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through NES, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of NES so that any resulting positions are delivered to NES upon settlement. As described above, NES normally arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 3315(d)(2)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions in accordance with proposed Rule 3315(d). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the error positions, as set forth in proposed Rule 3315(d)(2)(B).

[4] The Exchange has authority to receive inbound routes of equities orders by NES from The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX BX, Inc. (''BX''). *See* Securities Exchange Act Release Nos. 66178 (January 18, 2012), 77 FR 3539 (January 24, 2012) (SR–Phlx–2011–170); 65553 (October 13, 2011), 76 FR 64987 (October 19, 2011) (SR–Phlx–2011–138).

[5] The examples described in this filing are not intended to be exclusive. Proposed Rule 3315(d) would provide general authority for the Exchange or NES to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 3315(d) also would set forth the manner in which error positions may be handled by the Exchange or NES. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[6] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), NES should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the Exchange member. After submitting an order that is routed to a routing destination, if a member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member and the cancellation instruction would be disregarded.

[7] If a member did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor NES would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

affected routed orders. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example B. Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Depository Trust & Clearing Corporation (''DTCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member because of the earlier cancellation message from the routing destination. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example C. Error positions may result if NES receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member sends the Exchange an order to buy 100 shares of ABC stock, which causes NES to send an order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that member. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, NES would still be responsible for settling that member's purchase, but would be left with a short position in its error account.[8] NES would resolve the position in the manner described below.

Example D. Error positions may result from a technical or systems issue that causes orders to be executed in the name of NES that are not related to NES's function as the Exchange's routing broker and are not related to any corresponding orders of members. As a result, NES would not be able to assign any positions resulting from such an issue to members. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example E. Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that a member that has executed trades on the Exchange has lost the ability to clear trades through DTCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, NES would assume that member's side of the trades so that the counterparties can settle the trades. NES would post those positions into its error account and resolve the positions in the manner described below.

Example F. Error positions may result from a technical or systems issue at the Exchange that does not involve routing of orders through NES. For example, a situation may arise in which a posted quote/order was validly cancelled but the system erroneously matched that quote/order with an order that was seeking to access it. In such a situation, NES would have to assume the side of the trade opposite the order seeking to access the cancelled quote/order. NES would post the position in its error account and resolve the position in the manner described below.

In the circumstances described above, neither the Exchange nor NES may learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which NES never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted by NES to DTCC for clearance and settlement. Moreover, the affected members' trade may not be nullified absent express authority under Exchange rules.[9]

Proposed Amendments to Rule 3315

The Exchange proposes to amend Rule 3315 to add new paragraph (d) to address the cancellation of orders due to technical or systems issues and the use of an error account by NES.

Specifically, under paragraph (d)(1) of the proposed rule, the Exchange or NES would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, NES, or a routing destination.[10] The Exchange or NES would be required to provide notice of the cancellation to affected members as soon as practicable.

Paragraph (d)(2) of the proposed rule would permit NES to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. NES also would not be permitted to accept any positions in its error account from an account of a member and could not permit any member to transfer any positions from the member's account to NES's error account under the proposed rule.[11] However, if a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be processed for clearance and settlement on a locked-in basis.[12]

Under paragraph (d)(3), in connection with a particular technical or systems issue, NES or the Exchange would be permitted to either (i) assign all resulting error positions to members, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

NES or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable members affected by that technical or systems issue if NES or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable members affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable members affected by that technical or systems issue; and

[8] To the extent that NES incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

[9] *See, e.g.,* Rule 3312 (regarding clearly erroneous executions).

[10] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or NES determines to cancel orders routed to a routing destination under proposed Rule 3315(d), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[11] The purpose of this provision is to clarify that NES may address error positions under the proposed rule that are caused by a technical or systems issue, but that NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NES, the Exchange, a routing destination of NES, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which NES incurred a short position to settle a member's purchase, as the member did not yet have a position in its account as a result of the purchase at the time of NES's action (*i.e.,* NES's action was necessary for the purchase to settle into the member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one member to receive an execution for which there was not an available contraparty, in which case action by NES would be necessary for the position to settle into that member's account. Moreover, to the extent a member receives locked-in positions in connection with a technical or systems issue, that member may seek to rely on Phlx Rule 3226 if it experiences a loss. That rule provides members with the ability to file claims against the Exchange for ''losses directly resulting from the [PSX] System's actual failure to correctly process an order, message, or other data, provided PSX has acknowledged receipt of the order, message, or data.''

[12] *See* Example E above.

• Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with member orders and avoid using the error account.

There may be scenarios, however, where NES determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after NES has transmitted IOC orders to it that prevents NES from receiving responses to those orders, NES or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, NES or the Exchange would not pass on to the members any executions on the routed orders received from the routing destination.

The proposed rule also would require NES to liquidate error positions as soon as practicable.[13] In liquidating error positions, NES would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions.[14] NES also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (d)(4), NES and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[15] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[16] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since NES's or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing NES or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing NES to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 3315, would be the least disruptive means to correct these errors, except in cases where NES can assign all such error positions to all affected members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require NES to establish controls to restrict the flow of any confidential information between the third-party broker and NES/the Exchange associated with the liquidation of error positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–81 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–81. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[13] If NES determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected members but other error positions cannot be assigned, NES would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected members).

[14] This provision is not intended to preclude NES from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, NES might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–81, and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16765 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67339; File No. SR–BX–2012–043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Transaction and Routing Fees

July 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''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 Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, Section 2 entitled ''BX Options Market—Fees and Rebates'' to adopt rebates and fees relating to various options, including during the Opening Cross, and establish Routing Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on July 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed and received approval to operate a new options market.[3] The new market, called NASDAQ OMX BX Options, or BX Options, is an all-electronic trading platform with no physical trading floor. At this time BX proposes to adopt various fees and rebates which would be effective as of July 2, 2012. There are no fees or rebates for transacting an options business on BX prior to this date, except for membership, services and equipment charges, which may be applicable, as noted in the 7000 Rules.

BX proposes to amend Chapter XV, Section 2(1) to adopt rebates and fees for Customers, BX Options Market Makers[4] and Non-Customers[5] in various options[6] as follows:

FEES AND REBATES

[Per executed contract]

	Customer	BX Options market maker	Non-Customer[1]
IWM, QQQ, SPY:			
Rebate to Add Liquidity	[2] $0.15	[2] $0.15	$0.00
Fee to Add Liquidity	[3] 0.15	[3] 0.15	0.43
Rebate to Remove Liquidity	0.12	0.00	0.00
Fee to Remove Liquidity	0.00	0.43	0.43
BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO:			
Rebate to Add Liquidity	[2] 0.15	[2] 0.15	0.00
Fee to Add Liquidity	[3] 0.37	[3] 0.37	0.43
Rebate to Remove Liquidity	0.32	0.00	0.00
Fee to Remove Liquidity	0.00	0.43	0.43

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67256 (June 26, 2012) (SR–BX–2012–030).

[4] A BX Options Market Makers must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

[5] A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

[6] The Exchange is proposing to adopt fees and rebates for options overlying iShares Russell 2000 (''IWM''), PowerShares QQQ Trust (''QQQ'')®; Standard and Poor's Depositary Receipts/SPDRs (''SPY''), Bank of America Corporation (''BAC''), Citigroup, Inc. (''C''), Cisco Systems, Inc. (''CSCO''), Ford Motor Company Common Stock (''F''), Intel Corp (''INTC''), Microsoft Corporation (''MSFT''), JP Morgan Chase & Co. (''JPM''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), United States Oil Fund LP Units (''USO'') and all other Penny Pilot Options.

FEES AND REBATES—Continued

[Per executed contract]

	Customer	BX Options market maker	Non-Customer [1]
All Other Penny Pilot Options:			
Rebate to Add Liquidity	[2] 0.10	[2] 0.10	0.00
Fee to Add Liquidity	[3] 0.40	[3] 0.40	0.43
Rebate to Remove Liquidity	0.32	0.00	0.00
Fee to Remove Liquidity	0.00	0.43	0.43

[1] A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.
[2] The Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.
[3] The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

The Exchange would pay the Rebate to Add Liquidity, in any symbol, to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker. The Exchange would not pay a Rebate to Add Liquidity to a Customer or BX Options Market Maker if this qualifier is not met. Similarly, the Exchange would assess a Fee to Add Liquidity, in any symbol, to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer. The Exchange would not assess a Fee to Add Liquidity to a Customer or BX Options Market Maker if this qualifier is not met.

The Exchange also proposes to amend Chapter XV, Section 2(2) to adopt rebates and fees for the Opening Cross to state that Customer orders will receive the Rebate to Remove Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.

Finally, the Exchange proposes to amend Chapter XV, Section 2(4) to adopt fees for routing contracts to markets other the BX Options market as follows:

Exchange	Customer	Firm/Market Maker/Broker-Dealer	Professional
BATS (Penny Pilot)	$0.55	$0.55	$0.55
BOX	0.11	0.55	0.11
CBOE	0.11	0.55	0.31
CBOE orders greater than 99 contracts in ETFs, ETNs and HOLDRS)	0.29	N/A	0.31
C2	0.55	0.55	0.55
ISE (Standard)	0.11	0.55	0.29
ISE (Select Symbols) *	0.31	0.55	0.39
NOM	0.11	0.55	0.55
NYSE Arca (Penny Pilot)	0.55	0.55	0.55
NYSE Amex	0.11	0.55	0.31
PHLX (for all options than PHLX Select Symbols)	0.11	0.55	0.36
PHLX Select Symbols **	0.50	0.55	0.55

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.
** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Pricing Schedule for the complete list of symbols that are subject to these fees.

The Exchange believes that the proposed fees and rebates are competitive and will encourage BX members to transact business on the Exchange. Specifically, the Exchange believes that the proposed rebates will incentivize BX members to direct orders to the Exchange, resulting in greater liquidity, which benefits all market participants. The proposed fees would enable the Exchange to fund the various proposed rebates and incentivize market participants to route orders to the Exchange. The Routing Fees are proposed to recoup costs that the Exchange incurs for routing and executing certain orders on away markets.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

Transaction Charges

The Exchange believes that its proposal to assess different fees and rebates for IWM, QQQ and SPY as compared to BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and also different fees and rebates for all other Penny Pilot Options is reasonable given the fact that certain symbols such as IWM, QQQ and SPY, as well as other symbols which the Exchange differentiates, are highly liquid Penny Pilot Options as compared to other Penny Pilot Options. Additionally, other

[7] 15 U.S.C. 78f.
[8] 15 U.S.C. 78f(b)(4).

options exchanges differentiate pricing by security today.[9]

The Exchange believes that its proposal to assess different fees and rebates for IWM, QQQ and SPY as compared to BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and also different fees and rebates for all other Penny Pilot Options is equitable and not unfairly discriminatory as described hereafter. With respect to the proposed Rebate to Add Liquidity [10] and Rebate to Remove Liquidity [11] for IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and all other Penny Pilot Options, the Exchange believes that these rebates will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Further, the Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer the Rebate to Remove Liquidity to Customers and not other market participants as an incentive to attract Customer order flow to the Exchange. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

With respect to the Rebate to Add Liquidity, the Exchange is only paying the Rebate to Add Liquidity to a Customer or BX Options Market Maker when either the Customer or a BX Options Market Maker is contra to a Non-Customer [12] or BX Options Market Maker. While the Customer and BX Options Market Maker are unaware at the time they enter a transaction whether they would earn a rebate, the Exchange believes that the possibility of earning a $0.15 or $0.10 per contract Rebate to Add Liquidity, depending on the security, when trading against a Non-Customer (Professional, Firm, Broker-Dealer or Non-BX Options Market Maker) or BX Options Market Maker should incentivize these critical market participants to add liquidity. Increased liquidity benefits all market participants. The Exchange believes that offering both Customers and BX Options Market Makers the opportunity to receive a Rebate to Add Liquidity is reasonable because these market participants differ from other market participants. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. BX Options Market Makers have obligations to the market and regulatory requirements,[13] which normally do not apply to other market participants. A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and BX Options Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and BX Options Market Makers, as well as the differing mix of orders entered. Further, as noted herein, the Customer and BX Options Market Maker are unaware at the time the order is entered whether they would receive a $0.15 or $0.10 per contract Rebate to Add Liquidity, depending on the security, because they are unaware of the identity of the contra-party, which would determine whether they receive a rebate. The Exchange believes that the Customer and BX Options Market Maker rebate is equitable and not unfairly discriminatory because the Rebate to Add Liquidity, which is only being offered to Customers and BX Options Market Makers, would reward these participants for posting liquidity when they are contra to a Non-Customer (Professionals, Firms, Broker-Dealer or Non-BX Options Market Makers) or a BX Options Market Maker.

The Exchange believes that offering certain market participants a Rebate to Add Liquidity of $0.15 per contract for IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and a Rebate to Add Liquidity of $0.10 per contract for all other Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because options overlying IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO are more liquid, with tighter bid/ask differentials and therefore the Exchange believes a higher Rebate to Add Liquidity is required to incentivize Customers or BX Options Market Makers to post liquidity for the opportunity to obtain a rebate. The Exchange believes that offering a $0.32 per contract Rebate to Remove Liquidity for options overlying BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and all other Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because the Exchange desires to incentivize participants to transact Customer orders on the Exchange and obtain this rebate. The Exchange believes that this rebate will incentivize members to bring order flow and increase the liquidity on the Exchange to the benefit of all market participants. The Exchange believes that offering Customers a $0.12 per contract Rebate to Remove Liquidity for IWM, QQQ and SPY is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the rebate will incentivize market participants to transact business on the Exchange and the opportunity to receive the rebate will bring liquidity to BX to the benefit of all market participants.

The Exchange's proposal to create Fees to Add Liquidity, in certain circumstances, and Fees to Remove Liquidity for IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and all other Penny Pilot Options is reasonable because the fees would enable the Exchange to reward Customers and in some cases BX Options Market Makers that add or remove liquidity with rebates. The advantage of increased Customer order flow benefits all market participants. In addition, the proposed Fees to Add and Remove Liquidity are less than the rates assessed by other exchanges for similar fees.[14] The Exchange's proposal to only assess the Fee to Add Liquidity to a Customer or BX Options Market Maker

[9] *See* NASDAQ OMX PHLX LLC's ("Phlx") Pricing Schedule, which has different pricing for its Select Symbols and different pricing for other Multiply Listed Options. *See also* the NASDAQ Options Market LLC ("NOM") at Chapter XV, Section 2(1), which distinguishes pricing for NDX and MNX. *See also* the International Securities Exchange LLC's ("ISE") Fee Schedule, which distinguishes pricing for Special Non-Select Penny Pilot Symbols. *See also* the Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule, which distinguishes index products.

[10] The Exchange proposes a Rebate to Add Liquidity for IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO of $0.15 per contract and a Rebate to Add Liquidity for all other Penny Pilot Options of $0.10 per contact.

[11] The Exchange proposes a Rebate to Remove Liquidity for IWM, QQQ, SPY, of $0.12 per contract and a Rebate to Remove Liquidity for BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and all other Penny Pilot Options of $0.32 per contact.

[12] For purposes of these fees and rebates in Chapter XV, Section 2(1), a Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

[13] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[14] *See* BATS Exchange, Inc.'s Fee Schedule. *See also* NOM Chapter XV, Section 2 (the Penny Pilot Fees to Remove Liquidity are $0.45 per contract for all market participants).

when the Customer or BX Options Market Maker is contra to a Customer is reasonable, equitable and not unfairly discriminatory because the Exchange would only pay a Rebate to Remove Liquidity to a Customer and this fee enables the Exchange to reward Customers by offering a rebate. As previously, mentioned, attracting Customer order flow to the Exchange benefits all market participants. Also, BX Options Market Makers have burdens, as previously noted, that do not apply to other market participants. All Non-Customer market participants (Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers) would be assessed the same Fee to Add Liquidity on every transaction. The Exchange's proposal to create Fees to Add Liquidity and Fees to Remove Liquidity for IWM, QQQ, SPY, BAC, C, CSCO, F, INTC, MSFT, JPM, GLD, SLV, USO and all other Penny Pilot Options is equitable and not unfairly discriminatory for the reasons which follow hereafter. The Exchange is not assessing Customers a Fee to Remove Liquidity for any security. The Exchange believes that attracting Customer orders to BX benefits all market participants and it is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders. The Exchange is also uniformly assessing all other market participants (BX Options Market Makers, Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers) the same $0.43 per contract Fee to Remove Liquidity.

The Exchange is assessing Customers and BX Options Market Makers lower Fees to Add Liquidity, and only when contra a Customer, as compared to other market participants because as previously stated Customers and BX Options Market Makers make different contributions to the liquidity and trading environment on the Exchange as compared to other market participants. Non-Customer participants do not bring the unique benefits that Customer order flow provides the market nor do these participants have the obligations that were described herein for BX Options Market Makers. The Exchange is uniformly assessing all other market participants (Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers) a $0.43 per contract Fee to Add Liquidity, similar to the Fee to Remove Liquidity.

The Exchange's proposal to pay Customers a Rebate to Remove Liquidity during the Opening Cross [15] except when contra to a Customer, while all market participants except the Customer, the Non-Customer and BX Options Market Maker are assessed the Fee to Remove Liquidity, is reasonable because the Exchange seeks to continue to incentivize market participants to transact orders at the Exchange during the Opening Cross. Further, the Exchange's proposal to assess Non-Customers and BX Options Market Makers a Fee to Remove Liquidity enables the Exchange to reward those Customer orders that remove liquidity. While the Customer is unaware at the time the transaction is entered whether a rebate would be earned, the Exchange believes that the possibility of earning a Rebate to Remove Liquidity when trading against a Non-Customer should incentivize Customer order flow to the benefit of all market participants.

The Exchange's proposal to pay a Customer a Rebate to Remove Liquidity during the Opening Cross except when contra to a Customer, while all market participants except the Customer, the Non-Customer and BX Options Market Maker are assessed the Fee to Remove Liquidity, is equitable and not unfairly discriminatory because as mentioned previously Customer order flow benefits all market participants and similar to other rebates proposed herein, the Customer traditionally pays lower fees. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. Also, the Exchange is proposing to assess a Fee to Remove Liquidity on all market participants uniformly, other than a Customer, during the Opening Cross to fund the proposed rebate. This is similar to a rebate and fee offered in the Opening Cross on the NOM.[16]

The Exchange's proposed requirement that a BX Options Market Maker must be registered as a BX Options Market Maker in at least one security to qualify for the fees and rebates applicable to a BX Options Market Maker in Chapter XV, Section 2 is reasonable, equitable and not unfairly discriminatory because the Exchange desires to incentivize BX Options Market Makers to be actively engaged in market making to qualify for the fees and rebates proposed herein. Also, NOM has the same requirement for its transaction fees in Chapter XV, Section 2 of the NOM Rules.[17] The Exchange would uniformly apply this standard in paying rebates and assessing fees to BX Options Market Makers.

Routing Fees

The proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Firm, Market Maker, Broker-Dealer and Professional orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs [18] that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed to each market participant by the away market, plus clearing and other administrative and technical fees [19] for the execution of orders routed to BX and executed on an away market.

The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all market participant orders that are routed to an away market and to cover the respective cost to route the order. The Exchange applied a similar methodology in calculating the Routing Fees for each market participant by adding not more than a $0.11 per contract fee to the away market's remove fee to determine the Routing Fees.

The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme is competitive and

[15] The Opening Cross is the process for determining the price at which orders shall be executed at the open and for executing those orders.

[16] *See* The NASDAQ Stock Market, LLC Rules at Chapter XV, Section 2.

[17] *See* Securities Exchange Act Release No. 62543 (July 21, 2010), 75 FR 44037 (July 27, 2010) (SR–NASDAQ–2012–075).

[18] The Exchange utilizes the Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router to route orders in options listed and open for trading on the BX to destination markets. *See* Securities Exchange Act Release No. 67256 (June 26, 2012) (SR–BX–2012–030).

[19] The Exchange assesses the away market's remove fee plus a $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. There are also membership fees at away markets, and technical costs associated with routing.

similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that the proposed fee/rebate pricing structure would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2012–043 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–BX–2012–043.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–BX–2012–043* and should be submitted on or before July 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16762 Filed 7–9–12; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7947]

30-Day Notice of Proposed Information Collection: DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Contact Information and Work History for Nonimmigrant Visa Applicant.
- *OMB Control Number:* 1405–0144.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–158.
- *Respondents:* Nonimmigrant Visa Applicants.
- *Estimated Number of Respondents:* 10,000.
- *Estimated Number of Responses:* 10,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 10,000 hours.
- *Frequency:* One Time per visa application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 10, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Sydney Taylor, Visa Services, U.S. Department of State, 2401 E Street NW., L–603, Washington, DC 20520–0106, who may be reached on (202) 663–3721.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

This form collects contact information, current employment information, and previous work experience information from aliens applying for nonimmigrant visas to enter the United States. The information collected is necessary to determine eligibility for certain visa classifications.

Methodology

If the DS–160 is inaccessible, applicants can go online and complete the DS–158, print it out, and submit it along with the DS–156. If applicants are requested to submit the DS–158 after the submission of the DS–160, applicants are then required to either fill out the form by hand or online, print the form and submit in person at the time of the scheduled interview.

Dated: June 28, 2012.

Edward Ramatowski,

Managing Director, Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–16848 Filed 7–9–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7948]

30-Day Notice of Proposed Information Collection: DS–5506, Local U.S. Citizen Skills/Resources Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.
• *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
• *OMB Control Number:* OMB No. 1405–0188.
• *Type of Request:* Revision.
• *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
• *Form Number:* DS–5506.
• *Respondents:* United States Citizens.
• *Estimated Number of Respondents:* 2,400.
• *Estimated Number of Responses:* 2,400.
• *Average Hours per Response:* 15 minutes.
• *Total Estimated Burden:* 600 hours.
• *Frequency:* On Occasion.
• *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 10, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/L), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520 at *Ask-OCS-L-Public-Inquiries@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary to properly perform our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The Local U.S. Citizen Skills/Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

Methodology

This information collection can be completed by the respondent electronically or manually. The information collection will be collected on-site, by mail, fax, and email.

Dated: June 27, 2012.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–16850 Filed 7–9–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7949]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 37 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

April 27, 2012 (Transmittal Number 11–024)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the manufacture and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more. The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to France, Italy, Belgium and Spain for the design, manufacture and delivery of Satellite Subsystems On-Board Processors for the Iridium NEXT program. The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations. This notification should not be interpreted as the Department's conclusion that the applicant or any manufacturer, supplier or vendor or other entity related to it has not violated any of the statutes enumerated at 22 U.S.C. 2778(g) with respect to this or other related transactions.

The Department reserves its ability to approve or deny this transaction.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 11–075)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services sold commercially under contract in the amount of $50,000,000 or more. The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support the design, manufacturing and delivery phases of the SES–8 Commercial Communications Satellite Program for the Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations. This notification should not be interpreted as the Department's conclusion that the applicant or any manufacturer, supplier or vendor or other entity related to it has not violated any of the statutes enumerated at 22 U.S.C. 2778(g) with respect to this or other related transactions. The Department reserves its ability to approve or deny this transaction.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 15, 2011 (Transmittal Number 11–081)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to support the design, development, testing and qualification of weapon kits to be installed on UH–60M helicopters owned and operated by the Armed Forces of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 12, 2011 (Transmittal Number 11–094)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Hong Kong for the manufacture of transformers, inductors, and coils for power supplies.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 11–100)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the W3D Commercial Communication Satellites from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations. This notification should not be interpreted as the Department's conclusion that the applicant or any manufacturer, supplier or vendor or other entity related to it has not violated any of the statutes enumerated at 22 U.S.C. 2778(g) with respect to this or other related transactions. The Department reserves its ability to approve or deny this transaction.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

March 27, 2012 (Transmittal Number 11–105)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification for the export of defense articles, to include technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of firearms to the Government of India, Ministry of Home Affairs.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 11–112)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services for the design, manufacture, test, on-ground launch-site delivery, completion of in-orbit testing and long-term support for the MEXSAT Commercial Communication Satellite Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations. This notification should not be interpreted as the Department's conclusion that the applicant or any manufacturer, supplier or vendor or other entity related to it has not violated any of the statutes enumerated at 22 U.S.C. 2778(g) with respect to this or other related transactions. The Department reserves its ability to approve or deny this transaction.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 16, 2011 (Transmittal Number 11–120)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of major defense equipment, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the transfer of F–110–GE–132 jet engines to the United Arab Emirates to support their F–16 Block 60 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

January 3, 2012 (Transmittal Number 11–124)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, technical data, and defense services for the manufacture and sales of F–15 Head-Up Displays (HUD).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 15, 2011 (Transmittal Number 11–130)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services sold commercially under contract in the amount of $100,000,000 or more. The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services for the NATO Active Layered Theater Ballistic Missile Defence Systems Engineering and Integration Contract.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

March 9, 2012 (Transmittal Number 11–134)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for permanent export of defense articles, including technical data, and defense services sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, including technical data, and defense services for use by the Iraqi Terrorism Service Iraq Special Forces for military purposes.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 23, 2011 (Transmittal Number 11–136)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of major defense equipment, in the amount of $14,000,000 or more, and the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles to include technical data and defense services to Indonesia necessary to support the upgrade and retrofit of C–130B aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 15, 2011 (Transmittal Number 11–138)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the manufacture, assembly, inspection, and test of F404–GE–102 aircraft engines for incorporation into T–50 aircraft owned by the Republic of Korea. This agreement also expands the sales territory to include support to Poland and Indonesia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

December 15, 2011 (Transmittal Number 11–144)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense

articles to include technical data and defense services to The Netherlands related to Airframe Doors, Weapons Bay Doors, Engine Inlet Duct Skins and Engine Inlet Duct Assemblies of the F–35 Joint Strike Fighter aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

January 3, 2012 (Transmittal Number 11–146)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services for upgrade of current Swiss simulator training devices to reflect the same configuration as Swiss F/A–18 aircraft to support the F/A–18 Tactical Operational Flight Trainer Program for Switzerland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 17, 2012 (Transmittal Number 12–001)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to manufacturing license agreement for the manufacture of significant military equipment aboard and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services for Malaysia for the assembly, test and production of the M4 carbine.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 24, 2012 (Transmittal Number 12–006)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services for the manufacture of Harpoon Weapon System missile canisters and capsules for the Ministries of Defense for the following countries: Australia, Belgium, Canada, Chile, Egypt, Germany, Greece, India, Indonesia, Israel, Japan, Republic of Korea, Mexico, The Netherlands, Peru, Portugal, Saudi Arabia, Singapore, Spain, Taiwan, Thailand, Turkey, the United Kingdom, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–007)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more. The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada for the manufacture of aft and forward landing gear assemblies, subassemblies, parts and components for the CH–47/MH–47 Chinook Helicopter.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 24, 2012 (Transmittal Number 12–009)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to Canada, Norway, Spain, and the United Kingdom for the post-Preliminary Design Review (PDR) design, manufacturing, and delivery phases of the Thor-7 commercial communications satellite program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 24, 2012 (Transmittal Number 12–010)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the design, development, modification, support, testing, and certification of the Auxiliary Emergency Power System for the T–50 aircraft for end-use by the Republic of Korea Air Force and the Indonesian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–014)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to Japan for the manufacture of T58/CT58 engines for the Japanese Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–015)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture and sales of the RF–7800S–TR secure personal radio to Brazil.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–017)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services for the manufacture of T–16B Inertial Sensor Assemblies (ISAs) and Accelerometer with Higher Level Triad Assembly and associated Circuit Card Assemblies.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 12–021)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the manufacture of FA–50 Light Attack Aircraft for end use by the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–024)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license to include the export of defense articles, including technical data, or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for installation of AN/PRC–150 and AN/PRC–152 Falcon Radio Systems in various vehicle and dismounted applications to support the Australian Government, Department of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–027)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a retransfer of major defense equipment in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the sale of six (6) Gripen C/D combat aircraft, one (1) Saab 340 Airborne Early Warning System containing U.S. origin content, and twelve (12) RB 15F air-launched anti-ship missiles, which are developed and manufactured in Sweden and contain U.S. content, from the Government of Sweden to the Government of Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–030)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of technical data and defense services which support a space launch valued at $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical

data and defense services to Denmark, Norway, Russia, Sweden, Switzerland, United Kingdom, and Ukraine for support of Intelsat 27 satellite launch via the Sea Launch system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–031)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of defense articles and defense services sold under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services, to Mexico for the manufacture and assembly of non-SME metal assemblies and subassemblies. The assemblies and subassemblies will be installed in the United States on U.S. naval vessels.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 18, 2012 (Transmittal Number 12–032)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the sale and export of defense articles, including technical data, or defense services abroad in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, defense services, and hardware necessary to support the delivery, operation and maintenance of 12 S–70i helicopters with an option to purchase an additional 10 S–70i helicopters by the Kingdom of Brunei.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–036)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification for the export of defense articles, to include technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of firearms to the Assistant Inspector General (Training), Special Protection Group of India.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–037)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Ministry of Defense, New Zealand Defense Force by a U.S. company for the sale of 11 SH–2G(I) helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 12–042)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification for the export of defense articles, to include technical data, and defense services in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of various calibers of center and rim bolt action rifles to the country of Belgium.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 24, 2012 (Transmittal Number 12–044)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached manufacturing license agreement involves the export of defense articles including technical data and defense services to Japan to manufacture turbine blades and turbine housings for the 131–9J Auxiliary Power Unit (APU) for end-use by the Ministry of Defense of Japan (JMOD).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–045)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data,

and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Mexican Air Force, Secretary of National Defense, Mexico by a U.S. company for the sale of T–6C Trainer Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 21, 2012 (Transmittal Number 12–054)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the design, development, manufacture, production, assembly and sustainment of the C–17 Globemaster III Transport Aircraft, Wing Trailing Edge Panels and Flap Hinge Fairings for end-use by a U.S. company in support of the United States Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

May 25, 2012 (Transmittal Number 12–060)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of F135 engine and short take-off vertical landing ''STOVL'' lift system technical data, defense services and manufacturing assistance to the UK to allow for the on-going design, development, manufacture, and support of the F135 engine STOVL lift system parts, components, assemblies, and sub-assemblies for end-use by the U.S. Government and JSF partner nations.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

April 27, 2012 (Transmittal Number 12–062)

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement, to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Kingdom in support of the sale of one C–17 Globemaster III transport aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,
Assistant Secretary, Legislative Affairs.

Dated: June 8, 2012.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2012–16852 Filed 7–9–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Teleconference on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public teleconference.

SUMMARY: This notice announces a public teleconference of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The teleconference is scheduled for Wednesday, July 25, 2012, starting at 10 a.m. Pacific Daylight Time. Arrange for oral presentations by July 18, 2012.

ADDRESSES: FAA—Northwest Mountain Region, Fred Isaac conference room, 1601 Lind Ave. SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, Fax (202) 267–5075, or email at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC teleconference to be held July 25, 2012.

The agenda for the teleconference includes discussion of Materials Flammability Working Group Recommendations and a decision on whether to forward the recommendation to the FAA.

Attendance is open to the public, but will be limited to the availability of teleconference lines. Participation will be by teleconference only. Please confirm your participation with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than July 18, 2012.

To participate, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Renton, WA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by July 18, 2012, to present oral statements at the teleconference. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the

meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on July 5, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–16842 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2012–0350]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This action reopens the comment period for a Petition for Exemption that was published on June 12, 2012. The petition for exemption from Aircraft Owners and Pilots Association (AOPA) and Experimental Aircraft Association (EAA), if granted, would allow AOPA and EAA members to conduct certain operations of aircraft without having to hold an FAA-issued medical certificate.

DATES: The comment period for Docket No. FAA–2012–0350 is reopened until September 14, 2012.

ADDRESSES: You may send comments identified by docket number FAA–2012–0350 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas, ARM–105, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7626; email *tyneka.l.thomas@faa.gov.*

Background

On June 12, 2012, a summary of the AOPA/EAA petition was published in the **Federal Register** (77 FR 35103). Comments to that document were to be received on or before July 2, 2012.

By letter dated June 18, 2012, AOPA and EAA requested that the FAA extend the comment period for an additional 70 days. The petitioner states that the additional time is necessary to ensure the public has adequate time to provide substantive comments.

Reopening Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petition made by AOPA/EAA. The FAA has determined that reopening of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Docket No. FAA–2012–0350 is reopened until September 14, 2012.

Issued in Washington, DC, on July 3, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–16844 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0053]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated June 5, 2012, the Alabama and Tennessee River Railway LLC has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2012–0053.

Applicant: Alabama and Tennessee River Railway LLC, Mr. Jason Scott, Vice President Signals & Communications, 3425 Forrest Avenue, Gadsden, Alabama 35904.

The Alabama and Tennessee River Railway LLC (ATN) seeks approval of the proposed discontinuance of signalized slide fences on the Birmingham Subdivision. The discontinuance would include the slide fence at Milepost (MP) 693.8, northbound signal at MP 697.1, and southbound signal at MP 691.9; slide fences at MP 701.6, 702.9, 703.2, 704.4, and 705.6, northbound signal at MP 706.8, and southbound signal at MP 699.9; slide fence at MP 718.0, northbound signal at MP 721.2, and southbound signal at MP 715.7; slide fences located at MP 724.4 and 724.5, northbound signal at MP 726.3, and southbound signal at MP 721.2.

The reasons given for the proposed changes is that there has been no slide activity affecting train operations since ATN began operations in 2005. The maximum authorized speed is 10 mph, with ATN crews operating at restricted speed, as outlined in General Code of Operating Rules 6.21, when a severe weather event is encountered during the course of duty. Maintenance-of-way employees also perform an inspection prior to trains operating in the area after a significant storm event. There are no passenger train operations in the area and freight trains average one train per day.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they

should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 24, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on July 3, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–16796 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0020]

Notification of Petition for Approval; Informational Filing and Request for Waiver

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 20, 2012, the Union Pacific Railroad (UP) and the National Railroad Passenger Corporation (Amtrak) have provided the Federal Railroad Administration (FRA) a petition for approval of an Informational Filing and Request for Waiver pursuant to 49 CFR 236.913(j) to conduct a high-speed rail (HSR) demonstration project. FRA has assigned the petition Docket Number FRA–2012–0020.

UP, Amtrak, and the Illinois Department of Transportation (IDOT) plan to conduct demonstration high-speed passenger train operations over a portion of the corridor between Chicago, IL, and St. Louis, MO, as part of the high-speed rail program. The demonstration segments are on UP's Joliet Subdivision, between Control Point (CP) X073 South Dwight, Milepost (MP) 72.81; and CP X093 Pontiac, MP 92.48.

High-speed passenger trains will operate up to 110 mph, and UP freight trains will continue to operate at speeds not to exceed 60 mph.

The scope of the work requires UP to design procure and install:

1. Cab signal fixed equipment in an initial segment between Dwight and Pontiac.

2. A train control system meeting Positive Train Control (PTC) requirements on the entire UP portion of the route, in accordance with Federal regulations.

The operations described and proposed in the filing are in furtherance of the High Speed Rail 2A Route Construction Contract (the ''2A Agreement'') dated March 4, 2011, as amended on December 18, 2011. This agreement is funded under FRA Grant/Cooperative Agreement FR–HSR–0015–11–01–00.

Operation on the demonstration segment will be under the centralized traffic control rules of the General Code of Operating Rules. UP freight trains will use automatic cab signals (ACS), consistent with the operation on its other ACS territories that do not provide speed control. Amtrak passenger trains will use the speed control function of the automatic train control on board their locomotives, which provides enforcement of speed limits associated with signal indications. UP and Amtrak are the only operators on the demonstration segment.

A modification of Incremental Train Control System (ITCS) in furtherance of the High-Speed Rail 2A Route Construction Agreement (2A Agreement) will provide a mechanism for safe activation of highway-grade crossing warning devices by passenger trains operating in excess of 79 mph. In addition, the two-way communications feature of ITCS allows crossing health and status information to be provided to approaching ITCS-equipped trains.

In support of the proposed test program, the railroads are seeking temporary relief from compliance with the following 49 CFR parts and sections:

Section 216.13, Special notice for repairs—locomotive; Section 217.9, Program of operational tests and inspections; recordkeeping; Section 217.11, Program of instruction on operating rules; recordkeeping; electronic recordkeeping; Part 218 [Subpart D]—Prohibition Against Tampering With Safety Devices; Section 229.7, Prohibited Acts; Section 229.135, Event recorders; Section 233.9, Annual reports; Section 234.9, Grade crossing signal system failure reports; Section 235.5, Changes requiring filing of application; Section 240.127, Criteria for examining skill performance; and Section 240.129, Criteria for monitoring operational performance of certified engineers. Relief from these regulations is sought only for the duration of the testing program, and only as the relief relates to ITCS-specific component elements.

A copy of the petition, the Informational Filing, the Request for Waiver, and any related documents are available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT's) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the 30-day comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

A comment period of 30 days after the date of this notice is established. Communications received before the end of the comment period will be

considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on July 3, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–16803 Filed 7–9–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 5, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 9, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request may be found at *www.reginfo.gov.*

Bureau of the Public Debt (BPD)

OMB Number: 1535–0032.

Type of Review: Revision of a currently approved collection.

Title: Application for Disposition of Retirement Plan and/or Individual Retirement Bonds Without Administration of Deceased Owner's Estate.

Form: PD F 3565.

Abstract: Used by heirs of deceased owners of Retirement Plan and/or Individual Retirement Bonds to request disposition.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 117.

OMB Number: 1535–0055.

Type of Review: Extension without change of a currently approved collection.

Title: Creditor's Request for Payment of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration.

Form: PD F 1050.

Abstract: Used to obtain creditors consent to dispose of securities of a deceased owner's estate without administration.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 150.

OMB Number: 1535–0102.

Type of Review: Revision of a currently approved collection.

Title: Supporting Statement of Ownership for Overdue United States Bearer Securities.

Form: PD F 1071.

Abstract: Used to establish ownership and support a request for payment.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 225.

OMB Number: 1535–0118.

Type of Review: Extension without change of a currently approved collection.

Title: Disposition of Treasury Securities Belonging to a Decedent's Estate Being Settled Without Administration.

Form: PD F 5336.

Abstract: Used by person(s) entitled to a decedent's estate not being administered to request disposition of securities and/or related payments.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 12,675.

OMB Number: 1535–0126.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Form: PD F 3871.

Abstract: Submitted by companies engaged in the business of writing mortgage guaranty insurance for purpose of purchasing ''Tax and Loss'' bonds.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 8.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–16774 Filed 7–9–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One individual Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the one individual in this notice, pursuant to Executive Order 13224, is effective on June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the

September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 27, 2012, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The listing for this individual on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individual

1. SALEH, Ali Mohamad (a.k.a. SALAH, Ali Mohammad; a.k.a. SALEH, Ali Mohamed; a.k.a. SALEH, Ali Mohammad; a.k.a. SALIH, Ali Abd-Al-Amir Muhammad; a.k.a. SALIH, Ali Muhammad; a.k.a. SALIH, Ali Muhammad Abd-Al-Amir); DOB 01 Jan 1974; POB Adchit, Lebanon; Cedula No. 1124006380 (Colombia); Passport AJ911608 (Colombia); alt. Passport 2071362 (Lebanon); alt. Passport 1183967 (Lebanon) (individual) [SDNTK] [SDGT] Linked To: ALMACEN BATUL; Linked To: COMERCIAL ESTILO Y MODA.

Dated: June 27, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–16845 Filed 7–9–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1097–BTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1097–BTC, Bond Tax Credit.

DATES: Written comments should be received on or before September 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Bond Tax Credit.

OMB Number: 1545–2197.

Form Number: Form 1097–BTC.

Abstract: Bond tax credits distributed by holders and issuers of tax credit bonds will be reported on this form. The form will be sent to taxpayers that received the distribution.

Current Actions: The paperwork burden associated with this form was recalculated.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 101,630,369.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 33,538,022.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 3, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–16746 Filed 7–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Price for the 2012 American Eagle Silver Uncirculated Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2012 American Eagle Silver Uncirculated Coin. The coin will be offered for sale at a price of $45.95.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: July 2, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–16747 Filed 7–9–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 132 July 10, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Buena Vista Lake Shrew; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0062; 4500030114]

RIN 1018–AW85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are further revising our proposed revised designation of critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) under the Endangered Species Act of 1973, as amended (Act). In 2009, we proposed to revise our critical habitat designation to consist of 4,649 acres (1,881 hectares) of land in five units in Kern County. That acreage has been recalculated, with use of current Geographic Information Systems technology, as 4,657 acres (1,885 hectares). In this revised proposal, we propose to add 525 acres (212 hectares) as critical habitat in the general areas of Kings and Kern Counties, California, including new units near Lemoore, Kings County, and near Semitropic, Kern County, California. In total, we are now proposing to designate approximately 5,182 acres (2,098 hectares) as critical habitat for the Buena Vista Lake shrew. We are reopening the comment period to allow interested parties an opportunity to comment on the proposal to revise the designation of critical habitat for the Buena Vista Lake shrew as proposed to be further revised in this document.

DATES: We will accept comments received or postmarked on or before September 10, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 24, 2012.

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2009–0062 and then follow the instructions for submitting comments.

(2) *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2009–0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6713. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a proposed revised designation of critical habitat for the endangered Buena Vista Lake shrew under the Endangered Species Act. Under the Act, any species that is determined to be a threatened or endangered species requires designated critical habitat. We must issue a rule to designate critical habitat. In total, approximately 5,182 acres of critical habitat for the Buena Vista Lake shrew in Kings and Kern Counties, California, fall within the boundaries of the revised critical habitat designation as proposed in this rule.

We designated critical habitat for this species in 2005. As part of a settlement agreement, we agreed to reconsider the designation, and published a proposed revised designation for the Buena Vista Lake shrew in the **Federal Register** on October 21, 2009 (74 FR 53999). Based on new information, we are submitting a revised proposal to designate critical habitat for the Buena Vista Lake shrew to the **Federal Register** on or before the June 29, 2012, settlement date (see Table 1 for additional areas).

TABLE 1—REVISIONS AND ADDITIONAL AREAS, IN ACRES, THAT WE ARE INCLUDING AS PROPOSED CRITICAL HABITAT

Critical habitat unit	Total	State	Private
Unit 4, Coles Levee *	270	46	223
Unit 6, Semitropic Ecological Reserve Unit	372	345	27
Unit 7, Lemoore Wetland Unit	97	.....	97
Total	739	391	347

* Addition of 56 acres from 2009 proposal.

The basis for our action. Under the Endangered Species Act, any endangered or threatened species must have a designated critical habitat. We are required to base the designation on the best available scientific data after taking into consideration economic and other impacts. The Secretary can exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

We will prepare a revised draft economic analysis. On April 28, 2011, we announced in the **Federal Register** (76 FR 23781) the availability of our draft economic analysis of the 2009 proposed revised designation. That economic analysis did not identify any areas with disproportionate costs associated with the designation. To ensure that we consider the economic impacts of this current proposal, we will revise the draft economic analysis. We will revise the draft economic analysis to include the economic impacts of the additional areas identified in the current revised proposal.

We will incorporate peer review. We sought comments and information from independent specialists to ensure that our 2009 proposed critical habitat designation was based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our specific assumptions and conclusions in the critical habitat designation. We will again seek peer review on this revised proposal to revise critical habitat designation. Information

we received from peer review will be incorporated in the final revised designation.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. We will accept written comments and information during this reopened comment period on the revisions herein as well as the proposed revised designation of critical habitat for the Buena Vista Lake shrew that was published in the **Federal Register** on October 21, 2009 (74 FR 53999), and on the draft economic analysis (DEA) of the 2009 proposed designation and the amended required determinations provided in the April 28, 2011, **Federal Register** (76 FR 23781) document. If you submitted comments or information on the 2009 proposed rule (74 FR 53999, October 21, 2009 and 76 FR 23781, April 28, 2011) during any of the previous comment periods, please do not resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. You may submit your comments and materials concerning this revised proposed rule, the 2009 proposed rule, the DEA associated with the 2009 proposed rule, and the amended required determinations by one of the methods listed in **ADDRESSES**.

We request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning the proposal to revise the designation of critical habitat for the Buena Vista Lake shrew, as revised herein. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Buena Vista Lake shrew habitat,

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change,

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why, and

(e) Areas identified in this revision to the proposal to revise critical habitat that should not be proposed as critical habitat and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Buena Vista Lake shrew and proposed revised critical habitat.

(5) Information that may assist us in identifying or clarifying the physical and biological features essential to the conservation of the Buena Vista Lake shrew, especially as they relate to habitat conditions for the Buena Vista Lake shrew at Atwell Island, Tulare County.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Specific information on the taxonomy of the Buena Vista Lake shrew, especially in relationship to the adorned, or Southern California, ornate shrew (*Sorex ornatus ornatus*) and their respective ranges.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether the potential exclusion of the Kern Fan Recharge Unit (Unit 3) under section 4(b)(2) of the Act, which is covered by the Buena Vista Lake Shrew Special Management Plan for Kern Fan Water Recharge Site, and Addendum, from final critical habitat is or is not appropriate, whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why, and whether such an exclusion may or may not lead to the species' extinction.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. In a July 9, 2009, settlement agreement, the Service agreed to publish a new proposal of critical habitat for the species which encompassed the same geographic area as the August 19, 2004 (69 FR 51417) proposed designation. On October 21, 2009, the **Federal Register** published our proposed revised designation of critical habitat (74 FR 53999), in which we proposed five critical habitat units in Kern County totaling 4,649 acres (ac) (1,881 hectares (ha)). That acreage has been recalculated, with use of current Geographic Information Systems technology, as 4,657 ac (1,885 ha). In this revised proposal to revise the designation, we are notifying the public of several changes made to the 2009 proposed critical habitat. We are now adding two new critical habitat units to our proposal and revising Unit 4 (Cole's Levee) to include a newly discovered occurrence just to the north of the existing unit. Second, we are updating the descriptions of previously proposed units, and revising the criteria and methods sections to accommodate newer geographical information systems technologies. This revised proposed rule incorporates new information on the distribution and presence of the Buena Vista Lake shrew that was not available at the time that we completed our 2009 proposed revised critical habitat rule.

A summary of the information that is relevant to this revised proposed critical habitat designation is provided below. For more information on previous Federal actions concerning the Buena Vista Lake shrew, refer to the proposed revised designation of critical habitat published in the **Federal Register** on October 21, 2009 (74 FR 53999). Additional relevant information may be found in the final rule to designate critical habitat for the Buena Vista Lake shrew published on January 24, 2005 (70 FR 3437). For more information on the Buena Vista Lake shrew or its habitat, refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101), which is available online at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Species Description

The Buena Vista Lake shrew (*Sorex ornatus relictus*) is one of nine subspecies within the ornate shrew (*Sorex ornatus*) species complex known to occur in California (Hall 1981, pp. 37, 38; Owen and Hoffmann 1983, pp. 1–4; Maldonado 1992, p. 3). The Buena Vista Lake shrew is a mammal, approximately the size of a mouse. Like other shrews, the subspecies has a long snout, tiny bead-like eyes, ears that are concealed, or nearly concealed by soft fur, and five toes on each foot (Burt and Grossenheider 1964, p. 2; Ingles 1965, pp. 81–84). Shrews are active day or night. When they are not sleeping, they are searching for food (Burt and Grossenheider 1964, p. 3).

Grinnell (1932) was the first to describe the Buena Vista Lake shrew as a new subspecies, based on the type specimen and two other specimens collected around the old Buena Vista Lake bed. A single specimen of the shrew had previously been collected in October 1909, at Buttonwillow, a town approximately 25 miles (mi) (40 kilometers (km)) northwest of Buena Vista Lake (Williams 1986, p. 13; Long 1998, p. 1; California Academy of Sciences 2012). According to Grinnell's description, the Buena Vista Lake shrew's back is predominantly black with a buffy-brown speckling pattern, its sides are more buffy-brown than the upper surface, and its underside is smoke-gray. The tail is faintly bicolor and blackens toward the end both above and below. The Buena Vista Lake shrew differs from its geographically closest subspecies, the adorned ornate shrew (*Sorex ornatus ornatus*), by having darker, grayish-black coloration, rather than brown. In addition, the Buena Vista Lake shrew has a slightly larger body size; shorter tail; skull with a shorter, heavier rostrum; and a higher and more angular brain-case in dorsal view (Grinnell 1932, pp. 389, 390).

Grinnell (1932, p. 390) noted evidence that integration between the adorned and the Buena Vista Lake shrew subspecies occurred in areas of geographic overlap. This integration prompted Freas (1990, pp. 2, 3) to question the legitimacy of the Buena Vista Lake shrew's status as a subspecies distinct from the broader-ranging adorned ornate shrew. Since the 1990s, the *Sorex ornatus* complex (consisting of eight subspecies in California and one in Baja California) has been the subject of genetic and morphological evaluation (Maldonado 1998). Preliminary results from strictly morphological measurements for this group did not clarify distribution of the various subspecies throughout California. However, mitochondrial DNA and microsatellite, nuclear sequences, and allozyme data have aided in determining subspecies' ranges. From these data, researchers determined that the Buena Vista Lake shrew is a distinct subspecies from other ornate shrew subspecies; and that it is unlike any other sampled throughout the southern San Joaquin Valley (Maldonado 1998), although later authors noted the unsettled taxonomy of ornate shrews (Williams and Harpster 2001, pp. 13, 16). Recent evaluation of the best available scientific information on the ornate shrews has indicated, based on analysis of mitochondrial DNA, that the shrew occurrences in the Tulare Basin group together with the Buena Vista Lake Shrew (Maldonado 2011 unpaginated; Service 2011 unpaginated; Sacks 2011, unpaginated), although not all species experts agree that methods and genetic sampling are adequate to reach a conclusion (Patton 2011, pp. 1–5). We recognize that there continue to be questions regarding the taxonomy of ornate shrews found in specific localities within the Tulare Basin; however, our current proposal is based on the currently accepted description of the Buena Vista Lake shrew (Grinnell 1932) and the best available science.

Life History

Ornate shrews, on the average, rarely live longer than 12 months, and evidence indicates that the normal lifespan does not exceed 16 months (Rudd 1955, p. 328). The Buena Vista Lake shrew has a breeding season that begins in February or March, and may either extend later in the year, based on habitat quality and availability of water, or end with the onset of the dry season in May or June (Maldonado 1998). The majority of females give birth in the spring, and produce a single litter containing four to six young. Within a population, the number of litters produced per year depends on how early or late in the year the young are born; adults are sexually active in spring, while some young-of-the-year that are born early in the year become sexually active by late summer (Owen and Hoffmann 1983, p. 4). Because the life expectancy of most shrews is 12 to 16 months (Rudd 1955, p. 328), most individuals probably produce no more than two litters in their lifetime, with population replacement occurring annually (Collins 1998).

Shrews are primarily insectivorous. Due to their high rate of metabolism relative to their capacity for energy storage (McNab 1991, p. 35), they must eat more than their own weight each day (Burt and Grossenheider 1964, p. 3) in order to withstand starvation and maintain their body weight. Shrews in this family can have an impact on surrounding plant communities by consuming large quantities of insects, slugs, and other invertebrates that can influence such things as plant succession and the irruptions (population dynamics) of pest insects (Williams 1991, p. 1). The Buena Vista Lake shrew also may be an important prey species for raptors, snakes, and mammalian predators, such as foxes and skunks (Maldonado 1992, p. 7).

Distribution and Historical Range

The Buena Vista Lake shrew was likely historically distributed in the marshlands of the San Joaquin Valley throughout most of the Tulare Basin (Grinnell 1933, p. 83). The Tulare Basin, essentially occupying the southern half of the San Joaquin Valley, had no regular outlet to the ocean and contained Buena Vista, Kern, and Tulare Lakes. These lakes were fed by the Kern, Kaweah, Tule, and Kings rivers and their tributaries, and were interconnected by hundreds of square miles of tule marshes and other permanent and seasonal lakes, wetlands, and sloughs (Williams and Harpster 2001, p. 13). Tulare Lake was the largest freshwater lake in the United States west of the Mississippi River. However, by the time the Buena Vista Lake shrew was discovered, the beds of these lakes were already dry and mostly cultivated, with only sparse remnants of the original fauna (Grinnell 1932, p. 1). Today the lakes and wetlands have been drained and converted into irrigated agricultural fields, though portions of

the historical lake beds fill with water in years of extraordinary runoff (Williams and Kilburn 1992, p. 329).

Habitat Characteristics

As discussed in detail in the Critical Habitat section below, the Buena Vista Lake shrew is closely associated with dense, riparian understories that provide food, cover, and moisture (Maldonado 1992, p. 5). Moisture is required to support a diverse insect fauna, which is the primary food source needed to maintain the Buena Vista Lake shrew's high metabolism. During surveys conducted at Kern Lake Preserve in 1988 and 1990, Freas (1990, p. 8) found that the Buena Vista Lake shrew preferred mesic (moderately moist) habitats over xeric (drier) habitats, with 25 animals being captured in the mesic environments and none in xeric habitat. Maldonado (1992, p. 5) also acknowledged this type of habitat preference, stating that the Buena Vista Lake shrew is closely associated with dense, riparian understories that provide food, cover, and moisture. He also noted that moist soil in areas with an overstory of willows or cottonwoods appears to be favored, but may not be an essential habitat feature (Williams and Harpster 2001, p. 13; Maldonado 2011).

The mesic, lower elevation range of the Buena Vista Lake shrew is almost completely surrounded by the semi-arid, higher elevation range of the adorned ornate shrew (Grinnell 1933, pp. 82, 83; Hall 1981, p. 38; Owen and Hoffman 1983, p. 2: Maldonado *et al.* 2001, p. 127). Grinnell (1932, p. 390) noted that adorned ornate shrews occupied the uplands along streamside habitat and intergraded with the lowland Buena Vista Lake shrews along the lower courses of streams that enter the Kern-Tulare basin.

New Information Specific to Buena Vista Lake Shrew Distribution

At the time of listing, the Buena Vista Lake shrew was identified as occurring in four isolated locations along an approximately 70-mile (mi) (113-kilometer (km)) stretch on the west side of the Tulare Basin: At the former Kern Lake Preserve on the old Kern Lake bed, the Kern Fan water recharge area, Coles Levee, and the Kern National Wildlife Refuge (Kern NWR) (67 FR 10101; March 6, 2002). By the time that critical habitat was proposed in 2004, a fifth occurrence of the Buena Vista Lake shrew had been identified at the historical lake bed of Goose Lake. During the same general period, continuing surveys of riparian and upland habitat resulted in capture of ornate shrews at several additional locations within the Tulare Basin, including Kern, Kings, and Tulare Counties, although the shrews were not identified to the subspecies level (Williams and Harpster 2001, p. 14; Endangered Species Recovery Program (ESRP) 2005, p. 1; Maldonado 2006, p. 5). In 2011, during our 5-year status review of the Buena Vista Lake shrew, we obtained additional information indicating that the shrews at these localities would be considered Buena Vista Lake shrews (Williams and Harpster 2001, p. 16; Maldonado 2011; Service 2011, pp. 6–9). Two of the occurrences (Lemoore and Semitropic Ecological Preserve (also known as Main Drain or Chicca and Sons)) are located within general riparian and wetland habitat known to be suitable for the Buena Vista Lake shrew; however, the third location (Atwell Island) does not match the habitat that has previously been described for the shrew and does not contain the physical or biological features identified as essential for the conservation of the Buena Vista Lake shrew (see Critical Habitat section). Additional information below describes what is now known about the Buena Vista Lake shrew at these locations.

At the time of publication of our 5-year review, surveys for Buena Vista Lake shrews had been conducted at 21 sites and the Buena Vista Lake shrew had been determined to be present in 8 of the sites (Williams and Harpster 2001, pp. 8–14; ESRP 2005, p. 1; Maldonado 2006, p. 5; Cypher 2010). Although shrews at the Semitropic, Lemoore, and Atwell Island locations had not been previously identified to subspecies in Maldonado 2006, communication between Service staff and species experts classified them as Buena Vista Lake shrews (Maldonado 2011). Trapping for Buena Vista Lake shrews has also been completed on the Tule Elk Preserve, Pixley National Wildlife Refuge (NWR), Lake Woollomes, the Nature Conservancy's Paine Wildflower Preserve, the Kern Water Bank, the Voice of America site west of Delano, Kern River Parkway, a parcel between Kern and Buena Vista Lakes owned by the Bureau of Land Management (BLM), the Buena Vista Lake Recreation Area, and Wind Wolves Preserve.

No shrews were detected at any location (Williams 1986, p. 3; Williams and Harpster 2001, pp. 6–12), with the exception of the Wind Wolves Preserve. However, the shrews detected at Wind Wolves Preserve are expected to be adorned ornate shrews based on mitochondrial DNA analysis of one tissue sample available from that location (Maldonado 2006, pp. 9, 16–19; Cypher 2010, p. 1; Maldonado 2011, pp. 1, 2). Several areas north of the Tulare Lake bed, including Tranquility, Helm, and the Los Banos Wildlife Area, hosted extremely high numbers of ornate shrews in several successful trapping outings, but the shrews collected in those locations were also likely to be the adorned ornate shrew, based on analysis of mitochondrial DNA and microsatellites.(Maldonado 2006, pp. 16–19; Maldonado 2011, pp. 1, 2).

In 1999 and 2000, shrews, which were not identified to subspecies, were captured during a restoration study on a farmland site that had been recently retired at the BLM Atwell Island site, located approximately 2 mi (3.2 km) south of Alpaugh in Tulare County. As described above, these shrews have recently been determined to be Buena Vista Lake shrews; however, the habitat in which they've been located does not match their known wetland habitat. In 1999, most of the captures were on ground that was planted to sugar beets and cotton the previous year. Between 1999 and 2000, a cover crop of barley was planted and harvested on most of the acreage, while a small portion of the area had been fallow longer than 5 years and had a cover of weedy, mostly exotic, annual plants (Williams and Harpster 2001, p. 13). The area has had a long history of irrigated agriculture, with the site surrounded by intensively farmed, irrigated cropland, thus indicating that the location did not match the available descriptions of Buena Vista Lake shrew habitat.

Because shrews were found in an atypical location, surrounded by intensively farmed, irrigated cropland, their discovery led to speculation that the shrews either were able to persist on site during cultivation of irrigated row crops or dispersed to the site after it was fallowed (Williams and Harpster 2001, pp. 13, 14). Although the site is located within an area that was historically classified as wetland, there is no wetland or riparian vegetation in the areas in which the shrews were found and the nearest water source is over three-quarters of a mile (1.2 km) to the north. The lack of typical shrew habitat components, such as standing water and dense riparian vegetation, have left us to speculate that shrews may persist here due to relatively localized deep cracks in the particular clay soils present in this portion of Atwell Island and the abundance of rodent burrows also present here, both of which may provide additional moisture, invertebrate prey, and cover for the shrews. Currently, this occurrence represents an anomaly that does not correspond to the common

information on Buena Vista Lake shrew preferences and needs, and we do not have sufficient information to determine long-term suitability of this habitat type for Buena Vista Lake shrews. We seek additional information on occurrence of shrews in habitat other than wetland and riparian habitat within the Tulare Basin, and on the suitability of this habitat type for Buena Vista Lake shrews.

New Information on Taxonomy

Since the designation of critical habitat in 2005, additional genetic analysis has been conducted to evaluate the patterns of genetic variation within the ornate shrew complex, including the Buena Vista Lake shrew, in the central and southern San Joaquin Valley (Maldonado 2006, p. 16). Maldonado (2006) analyzed microsatellite data and found 5 genetic groupings among the 117 samples that had been collected from 10 localities in the central-southern San Joaquin Valley. The five groupings are: (1) Tranquility and Helm; (2) Kern NWR, Kern Fan area, Atwell Island, Goose Lake, and Lemoore; (3) Coles Levee; (4) Kern Lake; and (5) Main Drain (Semitropic) (Maldonado 2006, pp. 16–20). Maldonado (2006, p. 14) determined that the levels of relatedness among the five groupings suggest that populations south of Tranquility and Helm form four distinct population groupings. However, because sample sizes from the localities are small, reflecting the rarity of the shrew in these locations, Maldonado emphasized that it is difficult to draw conclusions from the results (Maldonado 2006, pp. 17–19). In our 5-year status review of the subspecies, we reviewed the information above and reviewed the proximity of the various occurrence records. We concluded that the best available information indicates that the populations found south of Tranquility and Helm form four distinct groupings of Buena Vista Lake shrew, while populations at Tranquility and Helm are not the listed species (Service 2011, pp. 9, 10).

Previous Federal Actions

On October 21, 2009, the Service published a revised proposed designation of critical habitat for the Buena Vista Lake shrew (74 FR 53999) encompassing the same geographic area as the August 19, 2004 (69 FR 51417), proposed designation. The Service published a document on April 28, 2011 (76 FR 23781), announcing the reopening of the comment period for the revised proposed critical habitat designation, the associated draft economic analysis, and the amended required determinations. This document also announced a public hearing, which was held in Bakersfield, California, on June 8, 2011. On March 6, 2012, the Service was granted an extension by the Court to consider additional information on the shrew that was identified during the 5-year review process (*Center for Biological Diversity* v. *Kempthorne et al.,* Case 1:08–cv–01490–AWI–GSA, filed March 7, 2012). The extension provides for submission of a revised proposed rule to the **Federal Register** on or before June 29, 2012, with submission of a final rule on or before June 29, 2013.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the shrew from studies of the species habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101), the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), and the Five-Year Review of the Buena Vista Lake Ornate Shrew (Service 2011). We have determined that the following physical or biological features are essential for the Buena Vista Lake shrew:

Space for Individual and Population Growth and Normal Behavior

Historically, the Buena Vista Lake shrew was recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose, and Tulare Lakes on the valley floor below elevations of 350 feet (ft) (107 meters (m)) (Grinnell 1932 p. 389; Hall 1981 p. 38; Williams and Kilburn 1984 p. 953; Williams 1986 p. 13; Service 1998 p. 163). With the draining and conversion of the majority of the Buena Vista Lake shrew's natural habitat from wetland to agriculture, and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the Buena Vista Lake shrew were lost or degraded, and nonnative plant species replaced those associated with the shrew (Grinnell 1932 p. 389; Mercer and Morgan 1991 p. 9; Griggs 1992 p. 11; Service 1998 p. 163). Open water does not appear to be necessary for the survival of the shrew. The habitat where the shrew has been found contains areas with both open water and mesic environments (Maldonado 1992 p. 3; Williams and Harpster 2001 p. 12). However, the availability of water contributes to improved vegetation structure and diversity, which improves cover availability. The presence of water also attracts potential prey species, improving prey diversity and availability.

Current survey information has identified eight areas where the Buena Vista Lake shrew has been found in recent years (Maldonado 2006 p. 16; Williams and Harpster 2001 p. 1; ESRP 2005 p. 11): the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan water recharge area, Coles Levee Ecological Preserve (Coles Levee), the Kern National Wildlife Refuge (Kern NWR), the Goose Lake slough bottoms (Goose Lake), the Atwell Island land retirement demonstration site (Atwell Island), the Lemoore Wetland Reserve, and the Semitropic Ecological Reserve (also known as Main Drain or Chicca and Sons). Based on changes in the native habitat composition and structure, and descriptions of the habitat where the Buena Vista Lake shrew have been found, we identify habitat adjacent to, or within, a matrix of perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats as physical features that are needed by the Buena Vista Lake shrew.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The specific feeding and foraging habits of the Buena Vista Lake shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990 p. 2; Maldonado 1992 p. 6). Food

probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate (Burt and Grossenheider 1964, p. 3).

The vegetation communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, or edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983 p. 3). Therefore, based on the information above, we identify a consistent and diverse supply of invertebrate prey to be an essential component of the biological features essential for the conservation of the Buena Vista Lake shrew.

Cover or Shelter

The vegetative communities associated in general with Buena Vista Lake shrew occupancy are characterized by the presence of (but are not limited to): *Populus fremontii* (Fremont cottonwood), *Salix* spp. (willows), *Salicornia* spp. (glasswort), *Elymus* spp. (wild-rye grass), *Juncus* spp. (rush grass), and other emergent vegetation (Service 1998, p. 163). These communities are present at all sites but Atwell Island. In addition, Maldonado (1992, p. 6) found shrews in areas of moist ground that was covered with leaf litter and near other low-lying vegetation, branches, tree roots, and fallen logs; or in areas with cool, moist soil beneath dense mats of vegetation that were kept moist by proximity to the water line. He described specific habitat features that would provide suitable habitat for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus or debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001, p. 12) determined that, although moist soil in areas with an overstory of willows or cottonwoods appeared to be favored, they doubted that such overstory was essential.

The communities in which Buena Vista Lake shrews have primarily been found are characterized by dense mats of leaf litter or herbaceous vegetation. The insect prey of the shrew also thrives in the dense matted vegetation. Although shrews have also been found at Atwell Island, in an area largely devoid of vegetation but characterized by deep cracks in the soils, little is currently known of the shrew or habitat needs at this site.

The Buena Vista Lake shrew is preyed upon by small mammalian predators as well as by avian predators (Maldonado 1992, p. 7). Dense vegetative structure provides the cover or shelter essential for evading predators. It also serves as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews. Therefore, based on the information above, we identify riparian and wetland communities, and areas with suitable soil moisture that support a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation to be the essential components of the physical and biological features essential to the conservation of the species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Little is known about the reproductive needs of the Buena Vista Lake shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (Paul Collins 2000, p. 12). The edges of wetland or marshy habitat provide the shrew with a sheltered and hospitable environment, and provide a prey base that enables the shrew to give birth and raise its young. The dense vegetative understory also provides young with cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Freas 1990, p. 8; Kirkland 1991, p. 15; Maldonado 1992, p. 3; Maldonado *et al.* 1998, p. 1; Ma and Talmage 2001, p. 123).

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Preserving what little habitat remains for the Buena Vista Lake shrew is crucial to the survival of the species. There are many factors negatively impacting and restricting the shrew and its habitat, including selenium toxicity, habitat fragmentation, urban development, and the effects of climate change. The combined effects of climate change and habitat fragmentation have put immense pressure on species in highly developed areas like the San Joaquin Valley (Hannah and Lovejoy 2005, p. 4). Development has restricted the species to small islands of habitat with little to no connectivity or opportunity for expansion of its range. Climate change is a particular challenge for a variety of species because the interaction between additional stressors associated with climate change and current stressors could push species beyond their ability to survive (Lovejoy 2005, pp. 325–326), including the Buena Vista Lake shrew.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (such as, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is

extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011(entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Current climate change projections for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; IPCC 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Climate projections for smaller subregions such as California remain uncertain. However, modeling of hydrological responses to potential climate change in the San Joaquin watershed suggests that the hydrological system is very sensitive to climatic variations on a monthly and annual basis, with changes in crop phenology and water use suggested (Ficklin *et al.* 2009, pp. 25–27).

Use of downscaled climate modeling for the Sacramento-San Joaquin River Basin shows projected warming, with substantial decadal and interannual variability and altered streamflow seasonality in the southern San Joaquin Valley, suggesting that water infrastructure modifications would be needed to address changing conditions (Vanrheenen *et al.* 2004, pp. 1, 265–279). Due to the Buena Vista Lake shrew's reliance on dense riparian vegetation and adequate moisture in wetland areas, either increased drying of its home range or changes in water delivery practices that reduce water runoff could negatively affect the shrew, while increases in runoff could benefit the shrew. However, at this time we lack adequate information to make projections regarding the specific effects of climate change and its associated impacts on the Buena Vista Lake shrew and its habitat.

Primary Constituent Elements for the Buena Vista Lake Shrew

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Buena Vista Lake shrew in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be those components of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements for the Buena Vista Lake shrew are:

Permanent and intermittent riparian or wetland communities that contain:

- A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.
- Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and
- A consistent and diverse supply of prey. Although the specific prey species utilized by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the features' primary constituent elements sufficient to support the life-history processes of the species. All units and subunits proposed to be designated as critical habitat are currently occupied by the Buena Vista Lake shrew.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats:

All areas included in this proposed revision of critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the Buena Vista Lake shrew. Special management considerations or protection may be required to minimize habitat destruction, degradation, or

fragmentation associated with such threats as the following: Changes in the water supply allocations, water diversions, flooding, oil and gas extraction, nonnative vegetation, and agriculture. For example, the Coles Levee area is within the boundaries of a proposed oil and gas exploration proposal. Agricultural pressures to convert land to agriculture remain in the southern San Joaquin Valley, with unauthorized agricultural conversion to orchards noted to have occurred recently in the general area.

The designated units are located in areas characterized by large-scale agricultural production, and consequently, the units may be exposed to a number of pesticides, which could detrimentally impact the species. The Buena Vista Lake shrew currently exists on small remnant patches of natural habitat in and around the margins of a landscape that is otherwise dominated by agriculture. The Buena Vista Lake shrew could be directly exposed to lethal and sublethal concentrations of pesticides from drift during spraying of crops, or potentially directly exposed during herbicide treatment of canal zones and ditch banks, wetland or riparian edges, or roadsides where shrews might exist. Reduced reproduction in Buena Vista Lake shrews could be directly caused by pesticides ingested through grooming, and secondarily from feeding on contaminated insects (Sheffield and Lochmiller 2001, p. 284). A variety of toxicants, including pesticides and heavy metals, have been shown to negatively affect insectivores, including shrews, that have a high basal metabolism and tight energy balance. Treatment-related decreases in invertebrate prey availability may be especially significant to such insectivore populations (Ma and Talmage 2001, pp. 133–152).

The Buena Vista Lake shrew also faces high risks of extinction from random catastrophic events (such as floods or drought (Service 1998, p. 163). The low numbers of Buena Vista Lake shrews located in small isolated areas increases the risk of a random catastrophic event wiping out entire populations or severely diminishing Buena Vista Lake shrew numbers beyond the scope of recovery. These threats and others mentioned above could render the habitat less suitable for the Buena Vista Lake shrew by washing away leaf litter and complex vegetation structure (floods) or drying wetland habitat so that vegetative and prey communities die (drought), and special management may be needed to address these threats.

In summary, the critical habitat units identified in this designation may require special management considerations or protection to provide a functioning hydrological regime to maintain the requisite riparian and wetland habitat, which is essential in providing the space and cover necessary to sustain the entire life-cycle needs of the shrew, as well as its invertebrate prey. Changes in water supply could result in the alteration of the moisture regime, which could lead to reduced water quality or hydroperiod, loss of suitable invertebrate supply for feeding, and loss of complex vegetative structure for cover. The units may also require special management considerations due to ongoing pressures for agricultural conversion and oil and gas exploration, and pesticide use, and vulnerabilities associated with low population size and population fragmentation.

Summary of Changes From Previously Proposed Critical Habitat

On January 24, 2005, we designated 84 ac (34 ha) in Kern County, California, as critical habitat for the Buena Vista Lake shrew (70 FR 3438). On October 21, 2009, we published in the **Federal Register** a revised proposed critical habitat by reissuing the August 19, 2004, proposed critical habitat, which totaled approximately 4,649 ac (1,881 ha) (69 FR 51417). That acreage has been recalculated, with use of current Geographic Information Systems technology, as 4,657 ac (1,885 ha). We are now proposing to revise this designation to a total of approximately 5,182 ac (2,098 ha) consisting of seven critical habitat units. This is an increase of approximately 525 ac (212 ha) from the October 21, 2009 revised proposed designation. The additional areas include revisions to Unit 4 (Coles Levee) and the addition of Unit 6 (Semitropic Ecological Reserve) and Unit 7 (Lemoore Wetland) (see Table 1). We have also updated the unit descriptions and revised the criteria and methods sections to accommodate newer geographical information systems technologies. Finally, as the result of our new system for designating critical habitat (77 FR 25611; May 1, 2012), our rule portion now consists of maps only, without accompanying GIS coordinates. However, the coordinates for these maps are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, at *http://www.fws.gov/sacramento/,* or at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. At the time of listing, we were aware of four locations (Kern Lake, Kern National Wildlife Refuge, Coles Levee, and the Kern Fan Water Recharge Area) where the Buena Vista Lake shrew was extant, but we also noted that additional remnant patches of wetland and riparian habitat within the Tulare Basin had not been surveyed and might support the shrew (Service 2002, p. 10103). We considered the geographical area occupied by the species to include areas of remnant wetland and riparian habitat within the Tulare Basin.

As noted previously, shrews were also known from Atwell Island, Tulare County (Williams and Harpster 2001, pp. 13, 14), but had not been identified as Buena Vista Lake shrews. In January 2003, a fifth site, Goose Lake, was surveyed and Buena Vista Lake shrews were also identified at this location (ESRP 2004, p. 8). The Goose Lake Unit was included in the original proposal to designate critical habitat (Service 2004). The Lemoore and Semitropic sites were first surveyed for the Buena Vista Lake shrew in April 2005, and Buena Vista Lake shrews were captured at these sites (ESRP 2005, p. 11, 12).

We propose to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We include as occupied those areas that meet the following two conditions: (1) They contain the physical or biological features that are essential to the conservation of the species, and (2) they were identified as occupied in the original listing documents or determined to be occupied after 2002. Our reasoning for the inclusion of these additional areas (post-2002) is that, based on the biology of the Buena Vista Lake shrew and the conditions at these units, we have concluded that these areas were occupied at the time of original listing, but the areas had not yet been surveyed at that time. All proposed critical habitat units contain natural habitat containing the physical and biological features essential to the conservation of the species.

As noted above, the Buena Vista Lake shrew is a very small mammal, with an annual life cycle. Shrews, in general, have small home ranges in which they spend most of their lives, and generally exhibit a high degree of site-attachment, although males and juveniles of some species have been documented to disperse during the breeding season, with movement within a season varying between species from under 10 feet (a few meters) to, in one case, documented movement of 0.5 mi (800 meters) within a year (Churchfield 1990, pp. 55, 56). No proposed critical habitat unit is in close proximity to other units, precluding the potential for movement of shrews from other known occupied sites over the relatively short timeframe of 1 to 2 years. All proposed units retain wetland or riparian features and are within the Tulare Basin, the described historical range of the Buena Vista Lake shrew.

We also consider these proposed critical habitat units to be essential for the conservation of the species because they are areas located throughout the historical range of the species, are occupied, and are needed to maintain the existing distribution of the shrew. All areas are currently occupied and we consider these areas to be sufficient for the conservation of the species. Our generalized criteria for long-term conservation of the Buena Vista Lake shrew specify that three or more disjunct occupied sites, which collectively provide at least 4,940 ac (2,000 ha) of occupied habitat for the shrew, be secured and protected from incompatible uses (Service 1998, p. 192).

We have identified the proposed lands based on the presence of the physical or biological features described above, coupled with occupancy by the shrew. Protecting a variety of habitats and conditions that contain the physical or biological features will allow for the conservation of the species because it will increase the ability of the shrew to survive stochastic environmental events (fire, drought, or flood), or demographic (low recruitment), or genetic (inbreeding) problems. Suitable habitat within the historical range is limited, although conservation of substantial areas of remaining habitat in the Semitropic area is expected to benefit the shrew. Remaining habitats are vulnerable to both anthropogenic and natural threats. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations and metapopulations (a set of local populations where typically migration from one local population to other areas containing suitable habitat is possible) of shrews throughout its range. Therefore, these areas are essential to the conservation of the shrew.

In our development of this revised proposed critical habitat for the shrew, we used the following methods. As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the shrew. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (65 FR 35033, June 1, 2000, and 67 FR 10101, March 6, 2002), the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), the proposed rule designating critical habitat (69 FR 51417, August 19, 2004), the 5-year status review for the shrew (Buena Vista Lake Ornate Shrew 5-Year Review: Summary and Evaluation, Service 2011), research and survey observations published in peer-reviewed articles (Grinnell 1932, 1933; Hall 1981; Owen and Hoffman 1983; Williams and Kilburn 1984; Williams 1986; Maldonado *et al.* 2001; and Maldonado *et al.* 2004), habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to the Service through section 7 consultations, reports and documents that are on file in the Service's field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999a; ESRP 2004; ESRP 2005; and Maldonado 2006), personal discussions with experts inside and outside of the Service with extensive knowledge of the shrew and habitat in the area, and information received during the two previous comment periods.

The five critical habitat units that we originally proposed were delineated by creating rough areas for each unit by screen-digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc. (ESRI)), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historical species location points (California Natural Diversity Database (CNDDB) 2004), and mapped wetland habitats (California Department of Water Resources 1998) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the Buena Vista Lake shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs, we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files, including section 10(a)(1)(A) reports and biological assessments, on site visits, and on visual habitat evaluation in areas known to have shrews, and in areas within the historical ranges that had potential to contain shrew habitat.

For the five units, the polygons of identified habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), other peer-reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species' needs for conservation and whether these areas contained the appropriate primary constituent elements. We refined boundaries using satellite imagery, soil type coverages, vegetation land cover data, and agricultural or urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

For the revision of the Coles Levee Unit, and the addition of the Lemoore and Semitropic Units, we utilized shrew occurrence data collected by ESRP (Maldonado 2006, pp. 24–27; Phillips 2011), projected data within Arcview (ESRI), and delineated unit polygons. The polygons were created by overlaying species location points (Phillips 2011) onto NAIP imagery (current satellite aerial photography) (National Agriculture Imagery Program 2010) to identify wetland and vegetation features, such as vegetated canals, canals with cleared vegetation, vegetated sloughs, agricultural fields, and general changes in vegetation and land type. We also projected the original proposed units onto NAIP imagery and again utilized additional GIS data derived from a variety of Federal, State, and local agencies.

When determining revised proposed critical habitat boundaries, we made

every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Buena Vista Lake shrew. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

In summary, we are proposing to designate seven units as critical habitat. We have determined that the units were occupied at the time of listing, and that they are currently occupied (see Table 2). The units provide the physical or biological features needed to support the Buena Vista Lake shrew. The seven units contain the physical or biological features essential to the conservation of the species. We currently are proposing to include seven of eight known occupied sites, totaling 5,182 ac (2,098 ha), as critical habitat. We have determined that unoccupied areas are not currently essential to the conservation of the species.

TABLE 2—OCCUPANCY OF BUENA VISTA LAKE SHREW BY REVISED PROPOSED CRITICAL HABITAT UNITS

Unit	Occupied at time of listing?	Currently occupied?
1. Kern National Wildlife Refuge Unit.	yes	yes.
2. Goose Lake Unit	yes	yes.
3. Kern Fan Water Recharge Unit.	yes	yes.
4. Coles Levee Unit	yes	yes.
5. Kern Lake Unit	yes	yes.
6. Semitropic Ecological Reserve Unit.	yes	yes.
7. Lemoore Wetland Unit.	yes	yes.

The approximate area of each revised proposed critical habitat unit is shown in Table 3.

TABLE 3—REVISED PROPOSED CRITICAL HABITAT UNITS FOR THE BUENA VISTA LAKE SHREW

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Total		Federal		State		Local		Private	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
Unit 1, Kern National Wildlife Refuge:										
Subunit 1A	274	111	274	111	.....	.....	.....	.....	.....	.....
Subunit 1B	66	27	66	27	.....	.....	.....	.....	.....	.....
Subunit 1C	47	19	47	19	.....	.....	.....	.....	.....	.....
Unit 2, Goose Lake	1,279	518	.....	.....	.....	.....	.....	.....	1,279	518
Unit 3, Kern Fan Water Recharge	2,687	1,088	.....	.....	.....	.....	2,687	1,088	.....	.....
Unit 4, Coles Levee	270	109	.....	.....	46	19	.....	.....	223	90
Unit 5, Kern Lake Unit	90	36	.....	.....	.....	.....	.....	.....	90	36
Unit 6, Semitropic Ecological Reserve Unit	372	151	.....	.....	345	140	.....	.....	27	11
Unit 7, Lemoore Wetland Unit	97	39	.....	.....	.....	.....	.....	.....	97	39
Total	5,182	2,098	387	157	391	159	.....	.....	1,716	694

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Buena Vista Lake shrew, below.

Unit 1: Kern National Wildlife Refuge (Kern NWR) Unit

The Kern NWR Unit is completely comprised of Federal lands, and is located within the Kern NWR in northwestern Kern County. The Kern NWR Critical Habitat Unit consists of three subunits totaling approximately 387 ac (157 ha): Subunit 1A contains 274 ac (111 ha); subunit 1B contains 66 ac (27 ha); and subunit 1C contains 47 ac (19 ha). The unit was occupied at the time of listing, is currently occupied, and contains the physical and biological features that are essential to the conservation of the shrew. Shrew habitat in Unit 1 receives water from the California Aqueduct. One of the areas where Buena Vista Lake shrews are present has standing water from September 1 through approximately April 15. After that time, the trees in the area may receive irrigation water so the area may possibly remain damp through May, but the area is dry for approximately 3 months during the summer. Another area of known Buena Vista Lake shrew occurrences has standing water from the second week of August through the winter and into early July, and is only dry for a short time during the summer. Buena Vista Lake shrew captures have occurred in remnant riparian and slough habitat at the refuge (Service 2005b, pp. 48, 49).

This unit is essential to the conservation of the species because it is occupied, and the subunits include riparian habitat that contain the primary constituent elements. *Populus fremontii* trees (Fremont cottonwood), and *Salix* spp. (willow) are the dominant woody plants in riparian areas. Additional plants include *Scirpus* spp. (bulrushes), *Typha* spp. (cattails), *Juncus* spp. (rushes), *Heleocharis palustris* (spike rush), and *Sagittaria longiloba* (arrowhead). Other plant communities on the refuge that support shrews are valley iodine bush scrub, dominated by *Allenrolfea occidentalis* (iodine bush), *Suaeda* spp. (suaeda or seepweed), *Frankenia salina* (alkali heath), and salt-cedar scrub, which is dominated by *Tamarix* spp. (salt cedar). Both of these communities occupy sites with moist, alkaline soils.

The Kern NWR completed a Comprehensive Conservation Plan (CCP) for the Kern and Pixley NWRs in February 2005 (Service 2005b, pp. 1–103). The CCP provides objectives for maintenance and restoration of Buena Vista Lake shrew habitat on the Kern NWR. Objectives listed in the CCP include completing baseline censuses and monitoring for the shrew,

enhancement and maintenance of the 215-ac (87-ha) riparian habitat, through regular watering, to provide habitat for riparian species, including the shrew, and additional restoration of 15 ac (6 ha) of riparian habitat along canals in a portion of the refuge to benefit the shrew and riparian bird species (Service 2005b, pp. 84, 85). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, and from changes in hydrology due to off-site water management.

Unit 2: Goose Lake Unit

The Goose Lake Unit consists of 1,279 ac (518 ha) of private land, and is located about 10 mi (16 km) south of Kern NWR in northwestern Kern County, in the historical lake bed of Goose Lake. We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals. In January 2003, when the area was first surveyed for small mammals, approximately 6.5 ac (2.6 ha) of potential shrew habitat located along the Goose Lake sloughs were surveyed (ESRP 2004, p. 8), resulting in the capture of five Buena Vista Lake shrews. The maximum distance between two shrew captures was 1.6 mi (2.6 km), suggesting that Buena Vista Lake shrews are widely distributed on the site. The unit has been determined to have the necessary PCEs present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. The unit was included in the 2004 proposed critical habitat designation. Although we continue to presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also proposing to designate the unit under section 3(5)(A)(ii) of the Act. Even if the unit was not occupied at the time of listing, it is essential for the conservation of the shrew because it is considered to be currently occupied, is within the subspecies' range, and includes riparian habitat containing the PCEs in sloughs and wetlands and meets our criteria for designation as critical habitat.

In the past, Buena Vista Lake shrew habitat in this unit experienced widespread losses due to the diversion of water for agricultural purposes. However, small, degraded examples of freshwater marsh and riparian communities still exist in the area of Goose Lake and Jerry Slough (a portion of historical Goose Slough, an overflow channel of the Kern River), allowing shrews to persist in the area. Dominant vegetation along the slough channels includes *Frankenia* spp. (frankenia), *Allenrolfea occidentalis* (iodine bush), and *Suaeda* spp. (seepweed). The northern portion of the unit consists of scattered mature *Allenrolfea occidentalis* shrubs in an area that has relatively moist soils. The southern portion of the unit is characterized by a dense mat of *Distichilis* spp. (saltgrass) and clumps of *Allenrolfea* and *Suaeda* spp. A portion of the unit currently exhibits inundation and saturation during the winter months. Dominant vegetation in these areas has included cattails, bulrushes, *Juncus* spp., and saltgrass.

The Goose Lake area is managed by the Semitropic Water Storage District (WSD) as a ground-water recharge basin. Water from the California Aqueduct is transferred to the Goose Lake area in years of abundant water, where it is allowed to recharge the aquifer that is used for irrigated agriculture. At the time that the unit was originally proposed, the landowners, in cooperation with Ducks Unlimited, Inc. and Semitropic WSD, proposed to create and restore habitat for waterfowl in the unit area; wetland restoration that we expected to substantially increase the quantity and quality of Buena Vista Lake shrew habitat on the site. Restoration activities were completed in the last 5 years. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, from recreational use, and from changes in hydrology due to water management and maintenance of water conveyance facilities. There are currently no conservation agreements covering this land.

Unit 3: Kern Fan Water Recharge Unit

The Kern Fan Water Recharge Area Unit consists of 2,687 ac (1,088 ha) of private land, which is within the 2,800-ac, (1,133-ha) Kern Fan Water Recharge Area, and is owned by the City of Bakersfield. The unit is located along the banks of the Kern River, west of Bakersfield, and is adjacent to the Kern Water Bank, a 19,000-ac (7,689-ha) area owned by the Kern Water Bank Authority. Portions of the recharge area are flooded sporadically, forming fragmented wetland communities throughout the area.

This unit was occupied at the time of listing, is currently occupied by the Buena Vista Lake shrew, and includes the physical and biological features that are essential to the conservation of the Buena Vista Lake shrew. Remnant riparian areas are found throughout the area, but are mainly located in narrow strips near the main channel of the Kern River and are dominated by Fremont cottonwood, *Salix* spp. (willow species), *Urtica dioica* (stinging nettle), *Leymus triticoides* (creeping wild rye), *Baccharis salicifolia* (mulefat), and *Asclepias fascicularis* (narrow-leaved milkweed). The plant communities of the Kern Fan Water Recharge Area also include a mixture of Valley saltbush scrub and Great Valley mesquite shrub. The Valley saltbush scrub is characterized by the presence of *Atriplex polycarpa* (Valley saltbush), alkali heath, *Isocoma acradenia* (goldenbush), and *Hemizonia pungens* (common spikeweed). The soils in this area are sandy to loamy with no surface alkalinity. This community seems to intergrade with the Great Valley mesquite scrub plant community. This is an open scrubland dominated by *Prosopis juliflora* (mesquite), Valley saltbush, and goldenbush. The soils also are sandy loams of alluvial origin (soil types deposited by rivers).

Willow species, stinging nettles, and a thick mat of creeping wild rye dominate the location of the captured Buena Vista Lake shrews. Other plant species found in locations where the Buena Vista Lake shrews were trapped include Fremont cottonwood and salt grass. At the time of capture, this site had no standing water within 328 feet (100 meters) of the location where the Buena Vista Lake shrews were caught.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, and from changes in hydrology due to off-site water management, especially in dry years. The unit is adjacent to, but not included within, the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (Kern Water Bank HCP/NCCP) permit area (Kern Water Bank Authority 1997, p. 7).

Over the past seven years, the City of Bakersfield has worked with the Service to make management changes to benefit the Buena Vista Lake shrew, and has completed annual monitoring to assess habitat conditions for the Buena Vista Lake shrew. The City of Bakersfield is working with the Service to improve assurances for protection of the Buena Vista Lake shrew in this unit. The Service is considering whether to exclude this unit from critical habitat.

Unit 4: Coles Levee Unit

The Coles Levee Unit is approximately 270 ac (109 ha) in Kern County, of which 223 ac (90 ha) is owned by Aera Energy. An additional 46 ac (19 ha) are State lands within the Tule Elk Reserve. The unit is located northeast of Tupman Road near the town of Tupman, is directly northeast of the California Aqueduct, and is largely within the Coles Levee Ecosystem Preserve, which was established as a mitigation bank in 1992, in an agreement between Atlantic Richfield Company (ARCO) and California Department of Fish and Game. The preserve serves as a mitigation bank to compensate for the loss of habitat for listed upland species; the Buena Vista Lake shrew is not a covered species. The preserve is mostly highly degraded upland saltbush and mesquite scrub, and is interlaced with slough channels for the historical Kern River fan where the river entered Buena Vista Lake from the northeast. Most slough channels are dry except in times of heavy flooding, every several years. The preserve also contains approximately 2 mi (3.2 km) of much-degraded riparian communities along the Kern River.

A manmade pond, which was constructed in the late 1990s or early 2000s, is located within the unit. Water from the adjacent oil fields is constantly pumped into the basin. Vegetation includes bulrushes, stinging nettle, mulefat, salt grass, *Atriplex lentiformis* (quailbush), and *Conium maculatum* (poison hemlock). There are a few willows and Fremont cottonwoods scattered throughout the area. This site runs parallel to the Kern River bed.

In the 2009 proposed rule (74 FR 53999. October 21, 2009), we reproposed 214 ac (87 ha) of critical habitat as the Coles Levee Unit. In this unit, Buena Vista Lake shrews were originally captured along a nature trail that was adjacent to a slough, and were close to the water's edge where there was abundant ground cover but little or no canopy cover. The unit is delineated in a general southeast to northwest direction, along both sides of the Kern River Flood Channel and Outlet Canal, which runs through the Preserve. During a construction project in the summer of 2011, two Buena Vista Lake shrews were found just north of the previous northerly boundary of the unit. We have therefore extended the unit boundary along both sides of the canal to encompass the contiguous riparian habitat to the point where water is no longer retained and riparian vegetation essentially stops, thereby including riparian habitat along the Outlet Canal within the Tule Elk Reserve.

This unit is essential to the conservation of the species because it is occupied and includes willow-cottonwood riparian habitat that contains the PCEs. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from construction activities associated with projects to tie-in water conveyance facilities to the California Aqueduct and oil and gas-related activites, including pipeline projects. The area adjacent to Coles Levee is the site of active gas and oil production, and the Coles Levee Unit is within an area that was recently proposed for oil and gas exploration.

An HCP was issued for the Coles Levee Ecological Preserve Area. However, the HCP permit expired when ARCO sold the property to the current owner and the permit was not transferred.

Unit 5: Kern Lake Unit

The Kern Lake Unit is approximately 90 ac (36 ha) in size, and is located at the edge of the historical Kern Lake, approximately 16 miles south of Bakersfield in southwestern Kern County. This unit lies between Hwy 99 and Interstate 5, south of Herring Road near the New Rim Ditch. The unit was occupied at the time of listing, is considered currently occupied, and contains the physical and biological features that are essential to the conservation of the Buena Vista Lake shrew. Since the advent of reclamation and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. Currently, Kern Lake itself is generally a dry lake bed; however, the unit contains wet alkali meadows and a spring-fed pond known as ''Gator Pond,'' which is located near the shoreline of the lake bed. A portion of the runoff from the surrounding hills travels through underground aquifers, surfacing as artesian springs at the pond. The heavy clay soils support a distinctive assemblage of native species, providing an island of native vegetation situated among agricultural lands. The unit contains three ecologically significant natural communities: Freshwater marsh, alkali meadow, and iodine bush scrub.

The moisture regime for shrew habitat in this unit is maintained by agricultural runoff from the New Rim ditch. This unit is essential to the conservation of the species because it is currently occupied and includes habitat that contains the PCEs identified for the shrew. The Kern Lake area was formerly managed by the Nature Conservancy for the Boswell Corporation, and was once thought to contain the last remaining population of the Buena Vista Lake shrew.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from reductions in water delivery, from effects of surrounding agricultural use, and from industrial and commercial development. The proposed Maricopa Sun solar development is within a 2-mile radius of the unit. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site; however, it is within a matrix of lands managed for agricultural production.

Unit 6: Semitropic Ecological Reserve Unit

Unit 6 is located about 7 mi (11 km) south of Kern NWR and 7 mi (11 km) north of the Goose Lake unit along the Main Drain Canal. It is bordered on the south by State Route 46, approximately 2 mi (3 km) east of the intersection with Interstate 5, and is 372 ac (151 ha) in size. The State of California, Department of Fish and Game, holds 345 ac (140 ha) under fee title, and manages the area as part of the Semitropic Ecological Reserve. An additional 27 ac (11 ha) of the unit are private land.

We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see *Criteria Used To Identify Critical Habitat*). Buena Vista Lake shrews were identified in the unit on April 27, 2005, when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). At that time, Buena Vista Lake shrews were found in the southwestern portion of the unit, next to the Main Drain Canal. The unit has been determined to have the necessary PCEs present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also proposing to designate the unit under section 3(5)(A)(ii) of the Act. Even if the unit was not occupied at the time of listing, it is essential for the conservation of the Buena Vista Lake shrew due to its location approximately midway between Units 1 and 2, and location near the southern edge of remnant natural wetland and riparian

habitat. The unit is also considered essential for the conservation of the shrew because it is considered to be currently occupied, and contains a matrix of riparian and wetland habitat, including riparian habitat both along the canal, and within and adjacent to oxbow and slough features.

The major vegetative associations at the site are valley saltbush scrub and valley sink scrub. Valley saltbush scrub is found within the relatively well-drained soils at slightly higher elevations, and the valley sink scrub is found in the heavier clay soils. Dominant vegetation at the site includes *Bromus diandrus* (ripgut brome), *Bromus madritensis* ssp. r*ubens* (red brome), *Carex* spp. (sedges), *Juncus* spp. (rushes), *Polygonum* spp. (knotweed), *Polypogon monspeliensis* (rabbitfoot grass), *Rumex crispus* (curly dock), and *Vulpia myuros* (foxtail fescue). There is a light overstory of *Populus* ssp. (cottonwoods) at the most successful Buena Vista Lake shrew capture site.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from ongoing oil and gas exploration and development, ongoing conversion of natural lands for agricultural development, changes in water management, weed control activities, including use of herbicides, and the occurrence of range trespass in an open range area. Semitropic reserve lands are not fenced and are subject to occasional range trespass by sheep and cattle (CDFG 2012). State lands in the unit were acquired under the provisions of the Metro Bakersfield Habitat Conservation Plan (HCP), and are managed for listed upland species. Location of the Main Drain Canal in the unit, and the presence of wetland features are expected to benefit the shrew, although the shrew is not a covered species under the HCP. The State does not yet have a management plan for the Semitropic Ecological Reserve.

Unit 7: Lemoore Wetland Reserve Unit

The Lemoore Wetland Reserve Unit is located east of the Lemoore Naval Air Station and is 4 mi (6 km) west of the City of Lemoore in Kings County. The unit is bounded along the southern border by State Route 198, and on the north and west sides by a bare water-conveyance canal. It is 97 ac (39 ha) in size. The Unit is managed by the Natural Resources Conservation Service for waterfowl enhancement.

We consider that the unit was occupied at the time of listing and that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see *Criteria Used To Identify Critical Habitat*). Buena Vista Lake shrews were identified in the unit April 20–22, 2005, when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). The unit has been determined to have the necessary PCEs present and, therefore, meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also proposing to designate the unit under section 3(5)(A)(ii) of the Act. The unit is essential for the conservation of the shrew due to its location approximately at the northernmost extent of the subspecies' range, due to occupancy, and due to remnant natural wetland and riparian habitat that contains the PCEs.

The site was created to provide a place for city storm water to percolate and drop contaminants to shield the Kings River during years of flood runoff. Portions of the area are flooded periodically, forming fragmented wetland communities throughout the area.

The plant communities of the Lemoore Wetland Reserve Unit include a mixture of vegetation communities: nonnative grassland, vernal marsh, and elements of valley sink scrub. *Brassica nigra* (black mustard), *Bromus madritensis* ssp. r*ubens* (red brome), *B. hordeaceus* (soft chess), *Distichlis spicata* (saltgrass), *Frankenia salina* (alkali heath), *Juncus* spp. (rushes), *Lactuca serriola* (prickly lettuce), *Polypogon monspeliensis* (rabbitfoot grass), *Populus* ssp. (cottonwood), curly dock (*Rumex crispus*), willow (*Salix* ssp), bulrush (*Scirpus* ssp.), common sowthistle (*Sonchus oleraceus*), cattails (*Typha* ssp.), foxtail fescue (*Vulpia myuros*) and cocklebur (*Xanthium strumarium*) are common throughout the site. This unit is essential to the conservation of the species because it is currently occupied and contains the PCEs identified for the shrew. It is the northernmost occurrence of the shrew and, therefore, would be considered essential to protecting the outermost portions of its known range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act, or result in the destruction or adverse modification of any critical habitat proposed to be designated for such species.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we may provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Buena Vista Lake shrew. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Buena Vista Lake shrew. These activities include, but are not limited to:

(1) Actions that would affect riparian or wetland areas by any Federal agency. Such activities could include, but are not limited to, flood control or changes in water banking activities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(2) Actions that would affect the regulation of water flows by any Federal agency. Such activities could include, but are not limited to, damming, diversion, and channelization. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(3) Actions that would involve regulations funded or permitted by the Federal Highway Administration (We note that the Federal Highway Administration does not fund the routine operations and maintenance of the State highway system). Such activities could include, but are not limited to, new road construction and right-of-way designation. These activities could eliminate or reduce riparian or wetland habitat along river crossings necessary for reproduction, sheltering, or growth of Buena Vista Lake shrews.

(4) Actions that would involve licensing of construction of communication sites by the Federal Communications Commission. Such activities could include, but are not limited to, the installation of new radio equipment and facilities. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(5) Actions that would involve funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, or any other Federal agency. Such activities could include, but are not limited to, activities associated with the cleaning up of Superfund sites, erosion control activities, and flood control activities. These activities could eliminate or reduce upland or aquatic habitat for Buena Vista Lake shrews.

(6) Actions that would affect waters of the United States by the Army Corps under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands. These activities could eliminate or reduce the habitat necessary for the reproduction, feeding, or growth of Buena Vista Lake shrews.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines

in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the revised proposed critical habitat designation and as a result, we are not exempting any lands under section 4(a)(3)(B) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Buena Vista Lake shrew, the benefits of critical habitat include public awareness of the shrew's presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the shrew due to the protection from adverse modification or destruction of critical habitat. Since the shrew was first listed, we have consulted on projects on privately owned land that involved waterways, oil and gas development and exploration, and operations and maintenance of electricity transmission lines.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in the revised proposed critical habitat are appropriate for exclusion from the final designation pursuant to section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We have not proposed to exclude any areas from critical habitat, but we are considering whether to exclude the Kern Fan Water Recharge Unit (Unit 3) (2,687 ac (1,088 ha)), from final critical habitat designation. The Kern Fan Water Recharge Unit is owned by the City of Bakersfield and is managed as a groundwater recharge zone. The unit is adjacent to, but is not included in the Kern Water Bank Habitat Conservation Plan and Natural Community Conservation Plan permit area. The City of Bakersfield has managed the unit under a Service-approved management plan that was designed to benefit the shrew. The Service is currently working with the City to enhance the management plan to increase monitoring and funding assurances for the shrew. We are continuing to coordinate with the City, and will examine conservation actions for the shrew, including current management planning documents, in our consideration of the Kern Fan Water Recharge Unit for exclusion from the final designation of critical habitat for the shrew, under section 4(b)(2) of the Act. We specifically solicit comments on the benefits of inclusion or benefits of exclusion of this area as critical habitat.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the revised proposed critical habitat designation and related factors.

On April 28, 2011, we released a draft economic analysis (DEA) (Industrial Economics Incorporated (IEc) 2011) analyzing the impacts of designating critical habitat, as proposed in the October 21, 2009, proposed rule (74 FR 53999). In the DEA, the analysts concluded that incremental impacts resulting from the critical habitat designation for the previously proposed units are limited to additional administrative costs of section 7 consultation, and noted two primary sources of uncertainty associated with the incremental effects analysis: (1) The actual rate of future consultation is unknown, and (2) future land use on private lands is uncertain. The analysis did not identify any future projects on private lands beyond those covered by existing baseline projections. Section 7 consultation on the Buena Vista Lake shrew has not occurred on private lands that are not covered by conservation plans (Units 2 and 5). As a result, the analysis did not forecast incremental impacts due to such measures.

For the five units, the DEA estimated total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years

(2011 to 2030) to be approximately $133,000 ($11,700 annualized) in present value terms applying a 7 percent discount rate (IEc 2011, p. 4–2). Administrative costs associated with section 7 consultations on a variety of activities (including pipeline construction and removal, delivery of water supplies under the Central Valley Project, pesticide applications for invasive species, and restoration activities) in proposed critical habitat Units 2, 3, and 4 were expected to total approximately $53,900 over the next 20 years and made up the largest portion of post-designation incremental impacts, accounting for approximately 39 percent of the forecast incremental impacts (IEc 2011, pp. 4–11—4–12). Impacts were associated with section 7 consultations on Pacific Gas and Electric (PG&E) operations and maintenance activities, internal consultations at the Kern National Wildlife Refuge, section 7 consultations with the U.S. Army Corps of Engineers due to Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting, and the incremental impact of consultations and management plan review for the City of Bakersfield's Kern Fan Recharge Area.

The incremental costs were broken down by location of expected incremental costs within the five proposed critical habitat units, as follows: Unit 3, Kern Fan ($84,000 (present-value impacts)), Unit 1, Kern National Wildlife Refuge ($20,800), Unit 2, Goose Lake Unit ($16,500), Unit 4, Coles Levee Unit ($6,340), and Unit 5, Kern Lake Unit (no identified costs). The consultations forecast for proposed critical habitat Units 2 and 5 were limited to those associated with occasional permitted pipeline, restoration, or water projects. We are currently in the process of analyzing the additional areas we are currently proposing as critical habitat for potential economic impacts and we will issue a revised draft economic analysis once our review has been completed. As a result of the revisions, the potential impacts identified above may change.

We will announce the availability of the revised draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this revised proposal, we have determined that the lands within the revised proposed designation of critical habitat for the Buena Vista Lake shrew are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this revised proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this revised proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations—Amended

In our proposed rule published in the **Federal Register** on October 21, 2009 (74 FR 53999), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. In the April 28, 2011, document making available the DEA (76 FR 23781) we made use of the DEA data to make these determinations. We affirmed the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA's data, we amended our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 13211 (Energy Supply, Distribution, and Use). A revised economic analysis will be completed to consider economic impacts due to the revisions to proposed critical habitat that are included in this document.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), 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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our revision to the draft economic analysis, we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA. In the April 25, 2011, **Federal Register** document (76 FR 23781) announcing the availability of the DEA, we discussed the incremental impacts that were identified in the DEA, and we include this information above under the section, ''Exclusions Based on Economic Impacts.'' The previous economic analysis did not review the additional areas proposed in this rule; therefore, we defer our evaluation of the potential indirect effects to non-Federal parties until completion of the revised draft economic analysis we will prepare under section 4(b)(2) of the Act and Executive Order 12866.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our revision to the draft economic analysis for this current proposal, we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action. Upon completion of the revised draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the revised proposed designation.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this revised proposed critical habitat to significantly affect energy supplies, distribution, or use. Appendix A.2, of the 2011 DEA, provides the finding that although PG&E and Southern California Gas Company operate facilities within the proposed critical habitat designation, no incremental changes in facility operation are forecast and, therefore, the 2011 DEA included the determination that no changes in energy use, production, or distribution were anticipated (IEc 2011, p. A–6). Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our revised economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal

mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because none of the third-party entities identified in the 2011 DEA met the SBA's definition of a small government or business. Our finding is based in part on the previous economic analysis conducted for the previous designation of critical habitat and extrapolated to this designation, and partly on where the additional areas proposed for critical habitat within this designation are located. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our revised economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas we do not anticipate that property values will be significantly affected by the critical habitat designation. However, we have not yet completed the economic analysis for this revised proposed rule. Once the revised economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, the October 21, 2009, proposed critical habitat designation (74 FR 53999) with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Buena Vista Lake shrew is expected to impose nominal additional regulatory restrictions to those currently in place and, therefore, is expected to have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Buena Vista Lake shrew within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or

organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that were occupied by the Buena Vista Lake shrew at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the Buena Vista Lake shrew that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Buena Vista Lake shrew on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be revised at 74 FR 53999 (Ocotber 21, 2009) and set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. Amend § 17.95(a) by revising the entry for ''Buena Vista Lake Shrew (*Sorex ornatus relictus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kern and Kings Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Buena Vista Lake shrew consist of permanent and intermittent riparian or wetland communities that contain:

(i) A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water.

(iii) A consistent and diverse supply of prey. Although the specific prey species utilized by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

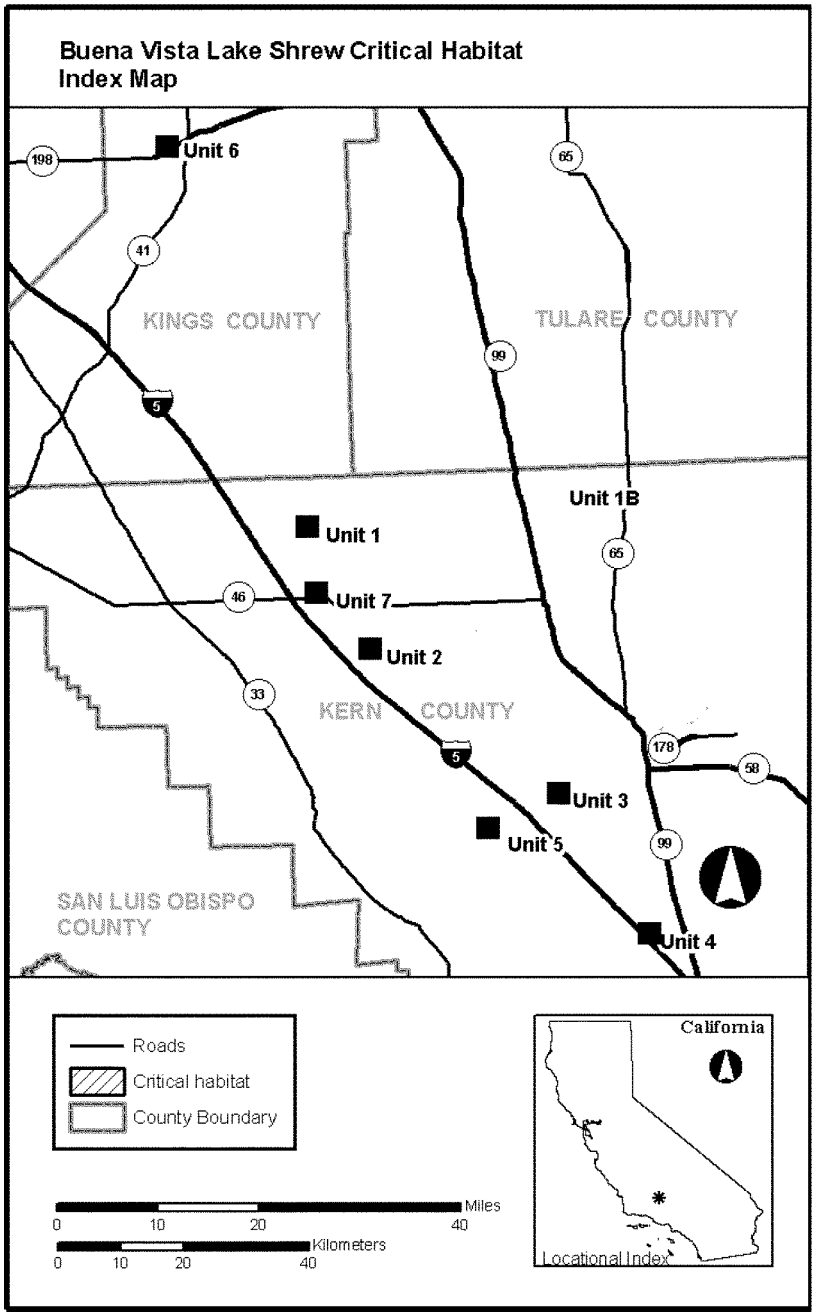
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 11 coordinates.

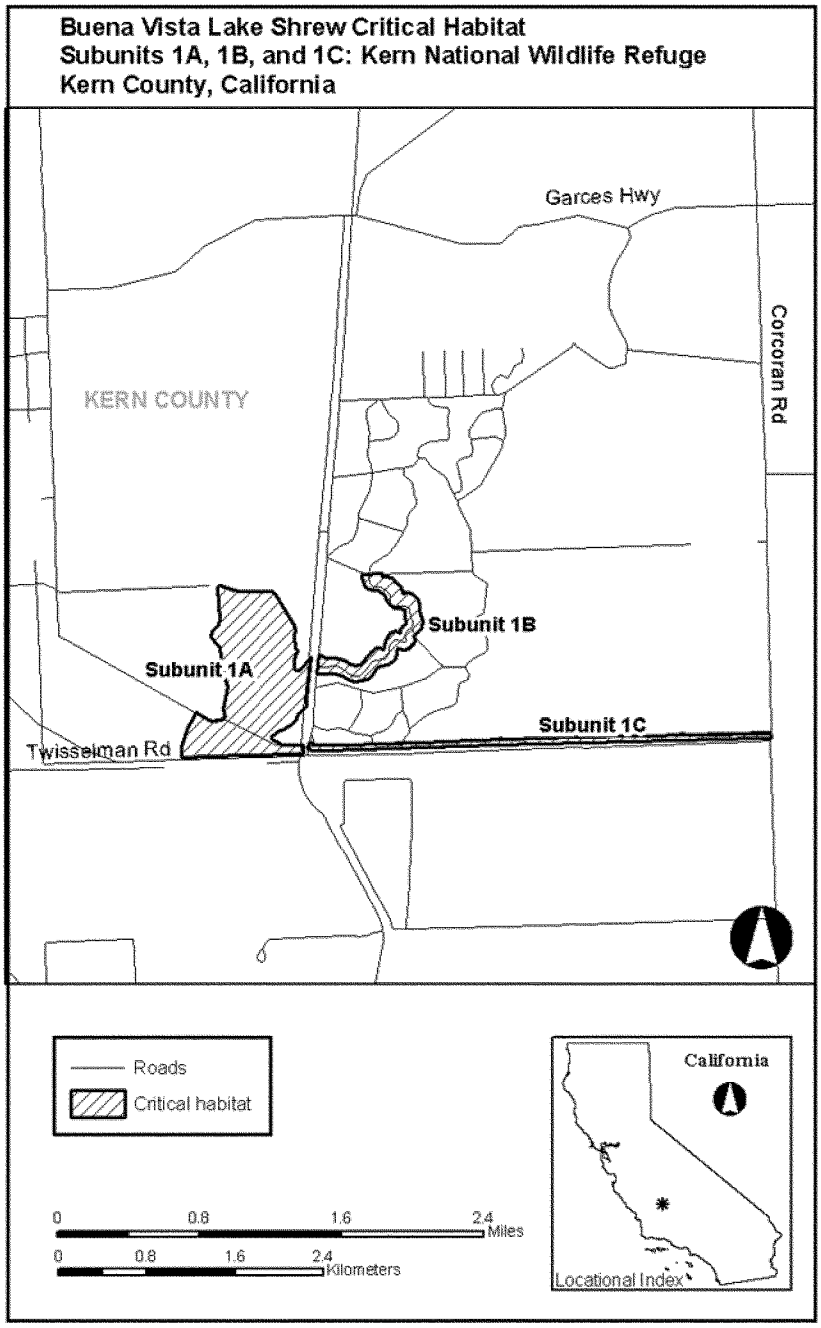
(5) The coordinates for these maps are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, at *http://www.fws.gov/sacramento/,* or at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825.

(6) The index map of critical habitat units for the Buena Vista Lake shrew (*Sorex ornatus relictus*) in Kern and Kings Counties, California follows:

BILLING CODE 4310–55–P


Buena Vista Lake Shrew Critical Habitat
Index Map
Unit 6
198
41
65
KINGS COUNTY
TULARE COUNTY
99
5
Unit 1B
Unit 1
65
46
Unit 7
Unit 2
33
KERN COUNTY
178
58
5
Unit 3
Unit 5
99
SAN LUIS OBISPO
COUNTY
Unit 4
Roads
Critical habitat
County Boundary
Miles
0 10 20 40
Kilometers
0 10 20 40
California
Locational Index

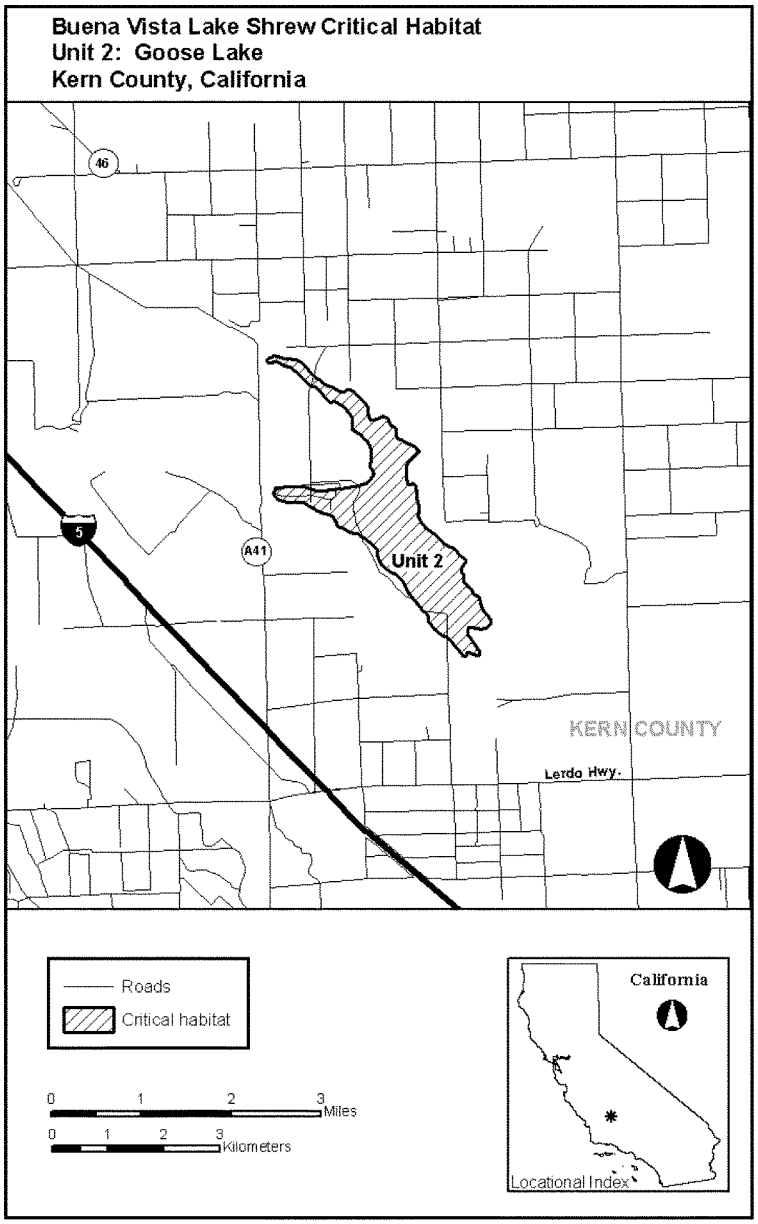
(7) Subunit 1A: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C follows:



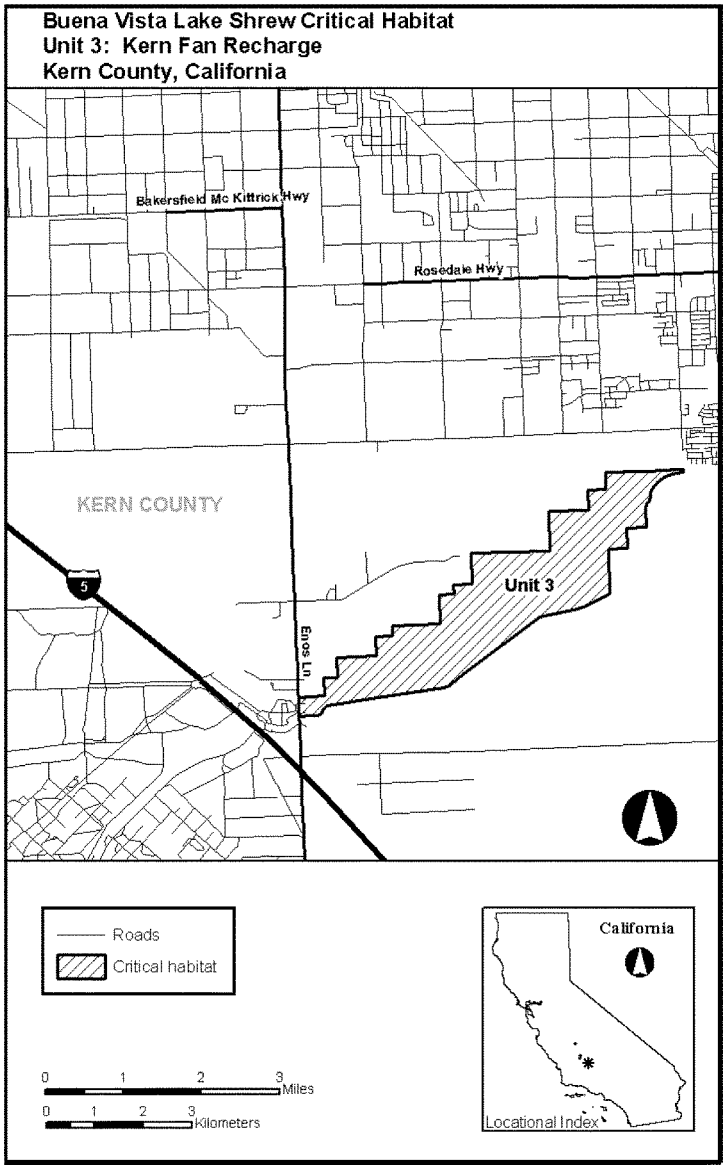
(8) Subunit 1B: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

(9) Subunit 1C: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

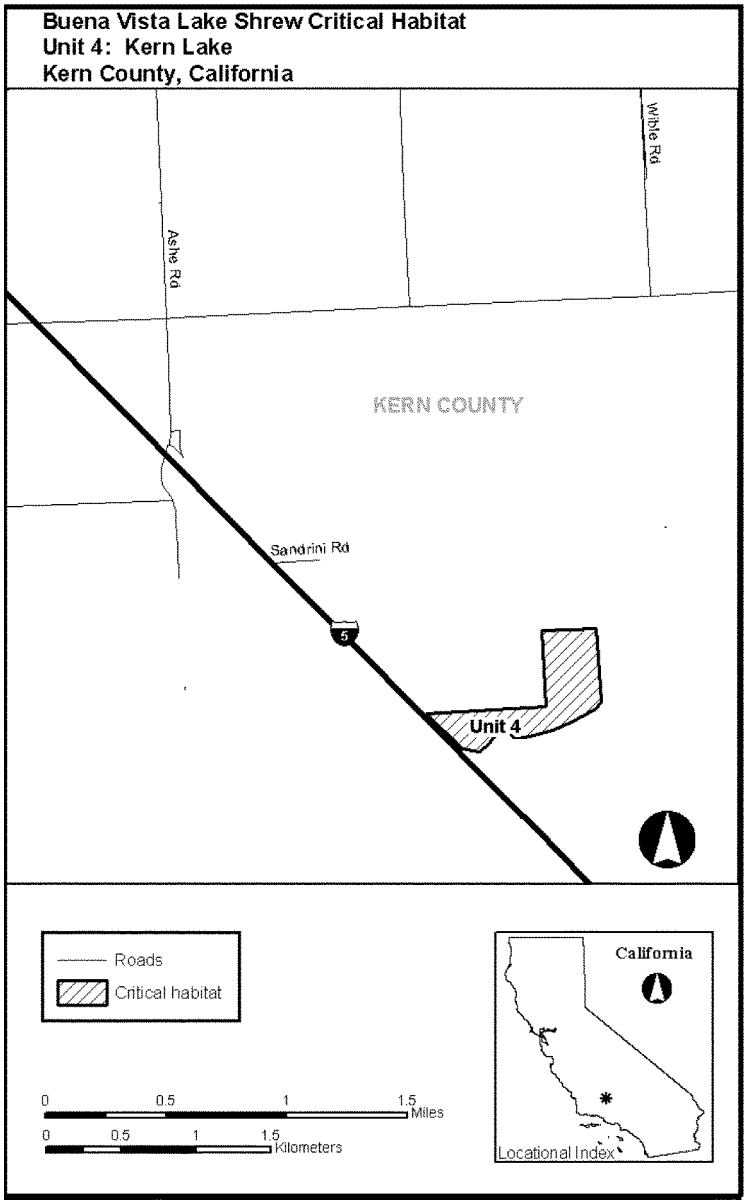
(10) Unit 2: Goose Lake, Kern County, California. Map follows:



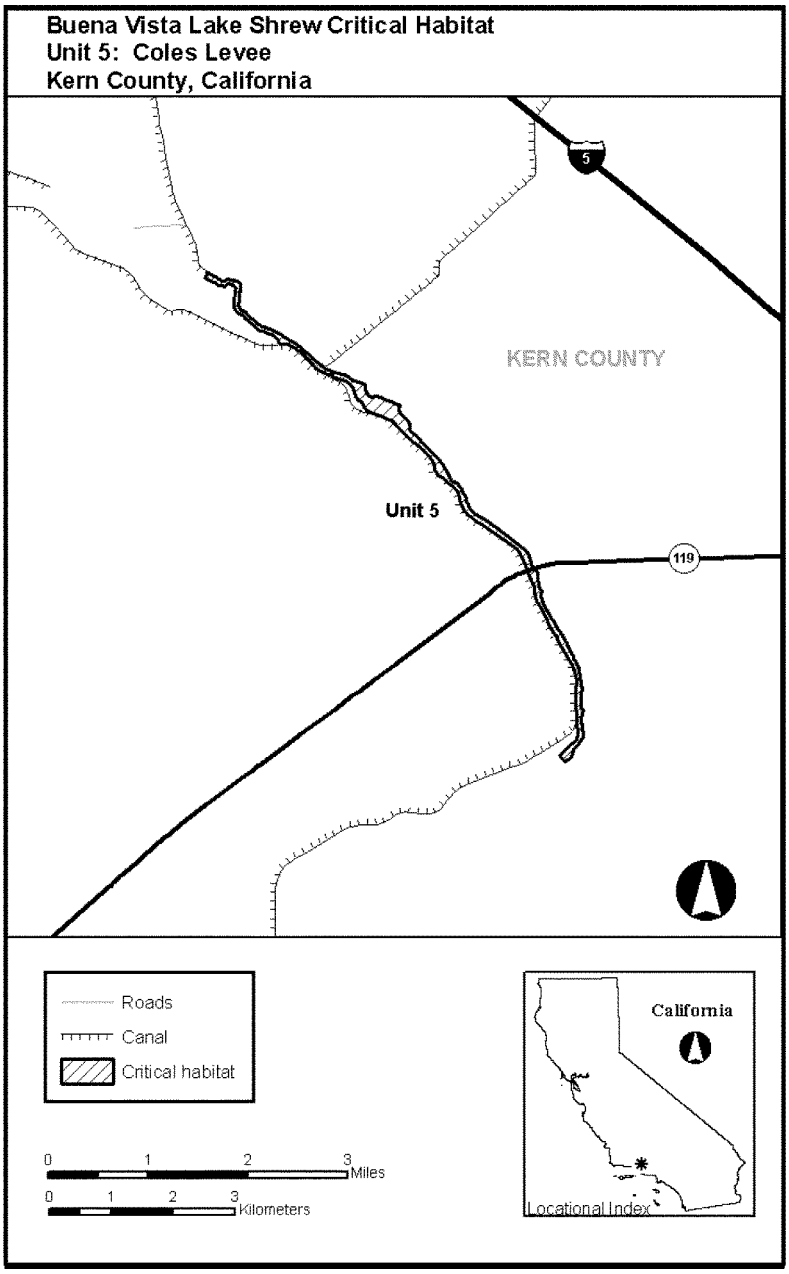
(11) Unit 3: Kern Fan Recharge Unit, Kern County, California. Map follows:



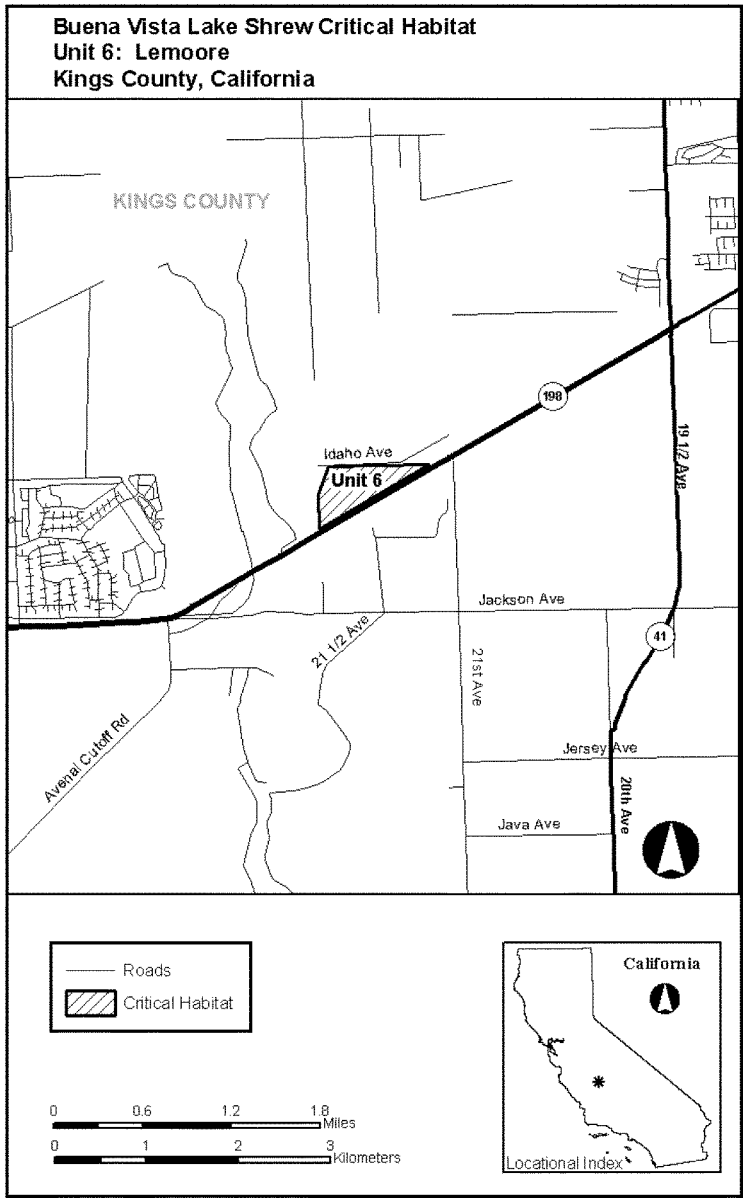
(12) Unit 4: Kern Lake, Kern County, California. Map follows:



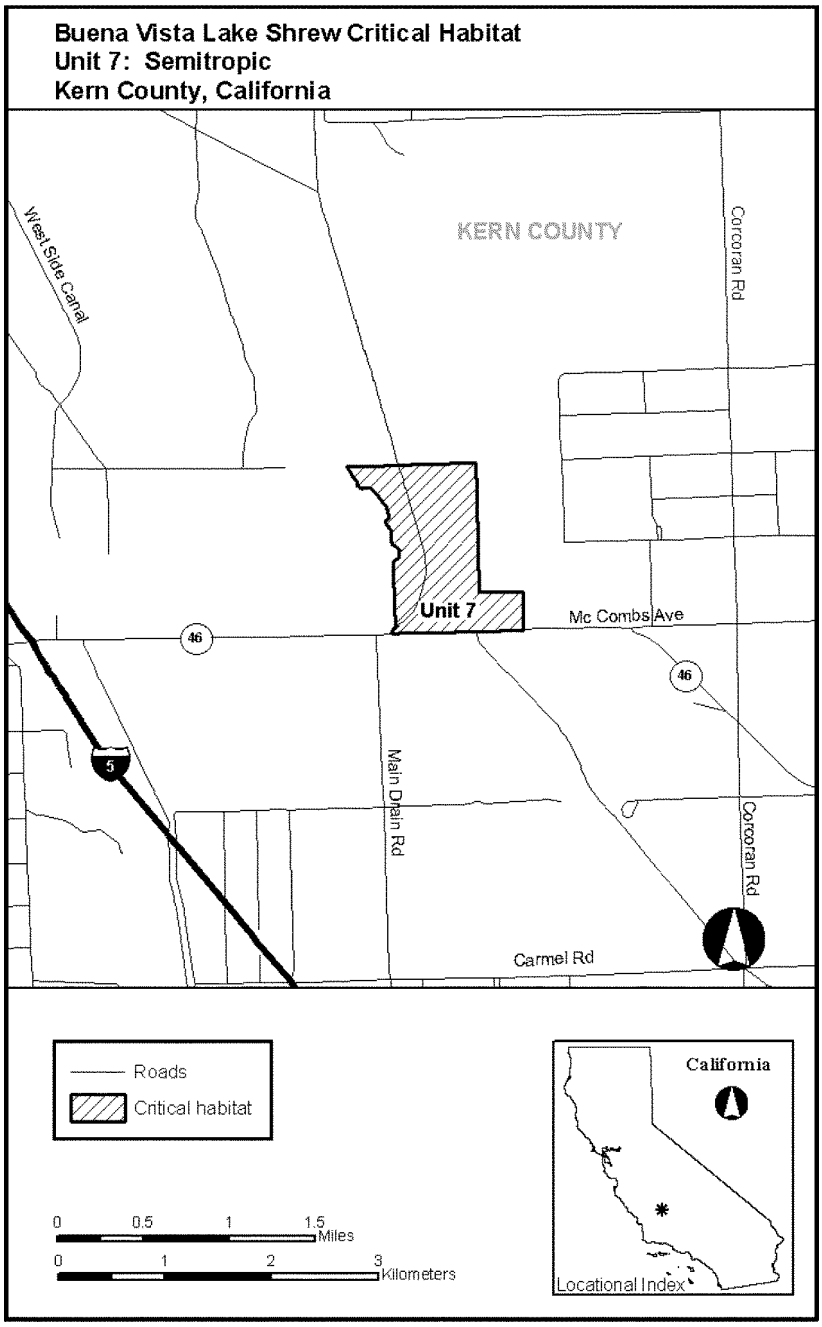
(13) Unit 5: Coles Levee, Kern County, California. Map follows:



(14) Unit 6: Lemoore Unit, Kern County, California. Map follows:



(15) Unit 7: Semitropic Unit, Kern County, California. Map follows:



* * * * *

Dated: June 26, 2012.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–16479 Filed 7–9–12; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 132 July 10, 2012

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16, 801, 803, *et al.*

Unique Device Identification System; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830

[Docket No. FDA–2011–N–0090]

RIN 0910–AG31

Unique Device Identification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a unique device identification system to implement the requirement added to the Federal Food, Drug, and Cosmetic Act (FD&C Act) by section 226 of the Food and Drug Administration Amendments Act of 2007 (FDAAA), Section 226 of FDAAA amended the FD&C Act to add new section 519(f), which directs FDA to promulgate regulations establishing a unique device identification system for medical devices. The system established by this rule would require the label of medical devices and device packages to include a unique device identifier (UDI), except where the rule provides for alternative placement of the UDI or provides an exception for a particular device or type of device such as devices sold over-the-counter and low risk devices. Each UDI would have to be provided in a plain-text version and in a form that uses automatic identification and data capture (AIDC) technology. The UDI would also be required to be directly marked on the device itself for certain categories of devices for which the labeling requirement may not be sufficient, for example, those that remain in use for an extended period of time and devices that are likely to become separated from their labeling. The rule would require the submission of information concerning each device to a database that FDA intends to make public, to ensure that the UDI can be used to adequately identify the device through its distribution and use.

DATES: Submit either electronic or written comments on the proposed rule by November 7, 2012. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by September 10, 2012, (see section V, the ''Information Collection Requirements'' section of this document). See section VII for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0090 and/or RIN No. 0910–AG31, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 (see the ''Information Collection Requirements'' section of this document) must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) at FAX: 202–395–7285, or email comments to *OIRA_submission@omb.eop.gov.* Please mark your comments to the attention of the FDA desk officer and reference this rule.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier [For paper or CD–ROM submissions]:* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No., and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jay Crowley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Avenue, Silver Spring, MD 20993, 301–796–5995, email: *cdrhudi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is intended to substantially reduce existing obstacles to the adequate identification of medical devices used in the United States. By making it possible to rapidly and definitively identify a device and key attributes that affect its safe and effective use, the rule would reduce medical errors that result from misidentification of a device or confusion concerning its appropriate use. The identification system established under this rule would lead to more accurate reporting of adverse events by making it easier to identify the device prior to submitting a report. It would allow FDA, healthcare providers, and industry to more rapidly extract useful information from adverse event reports, pinpoint the particular device at issue and thereby gain a better understanding of the underlying problems, and take appropriate, better-focused, corrective action. The rule will also require dates on medical device labels to conform to a standard format to ensure those dates are unambiguous and clearly understood by device users.

The rule will fulfill the statutory requirement of section 519(f) of the FD&C Act (21 U.S.C. 360i(f)), which directs FDA to promulgate regulations establishing a unique device identification system for medical devices; this requirement was added to the FD&C Act by section 226 of the Food and Drug Administration Amendments Act of 2007 (FDAAA), Public Law 110–85.

In developing the proposed rule, FDA has been partnering with industry to conduct pilot tests to identify potential issues and generate feedback on the development of a UDI system. Throughout the pilot activities, labeler organizations from the medical device industry focused on identifying and understanding potential issues that would arise for labelers in implementing UDI and provided that feedback to FDA. The proposed rule reflects this industry input and the lessons learned from these pilot activities. FDA also solicited input through public meetings; a public workshop with stakeholders from the medical device industry, hospitals, payors and other stakeholders; and, a public request for information on a series of key questions related to the development of UDIs through which FDA received extensive input from the medical device industry and the broader healthcare community. FDA solicits comments on the proposed rule from all interested stakeholders, and is particularly interested in industry comment on whether the proposed approach reflects the lessons from the pilot activities.

Under the proposed system, the health care community and the public would be able to identify a device

through a UDI that will appear on the label and package of a device. The UDI will provide a key to obtain critical information from a new database, the Global Unique Device Identification Database (GUDID), which will include information important to the identification of devices. UDIs will appear in both plain-text format and a format that can be read by a bar code scanner or some other AIDC technology. Certain devices for which the labeling requirement alone may not be sufficient would also be directly marked with a UDI, allowing accurate identification even when the device is no longer accompanied by its label or package. The types of devices that would be subject to the direct marking require are implantable devices; devices intended to be used more than once, and which are intended to be sterilized before each use; and stand-alone software. These types of devices have physical characteristics, or characteristics of use, that significantly increases the probability that the device will become separated from its label, particularly when used over an extended period of time.

By ensuring the adequate identification of medical devices through distribution and use, the rule would serve several important public health objectives—

Reduce Medical Errors. The presence of a UDI that is linked to device information in the GUDID database will facilitate rapid and accurate identification of a device, thereby removing a cause of confusion that can lead to inappropriate use of a device (e.g., confusion as to whether a device is packaged as sterile, or failure to recognize that a device is the subject of a recall or enforcement action). Using a device's UDI, you will be able to use the GUDID to positively identify the device and obtain important descriptive information, preventing confusion with any similar device which might lead to misuse of the device. Health care providers will no longer have to access multiple, inconsistent, and potentially incomplete sources in an attempt to identify a device, its key attributes, and a designated source for additional information.

Simplify the Integration of Device Use Information Into Data Systems. UDIs, particularly when provided through AIDC technology, would allow rapid and accurate data acquisition, recording, and retrieval. The use of UDIs in computerized physician order entry systems will help ensure that the intended device will be used in the treatment of a patient, rather than some similar device that may not fully meet the requirements of the health care professional who ordered the use of the device.

Provide for More Rapid Identification of Medical Devices With Adverse Events. An essential prerequisite to resolving adverse events is the timely and precise identification of the particular device or devices that may have a connection with an adverse event. The inclusion of UDIs in adverse event reports would lead to greater accuracy in reporting, by eliminating uncertainty concerning the identity of the device that is the subject of a report.

Provide for More Rapid Development of Solutions to Reported Problems. The rule also would require the inclusion of UDIs in adverse event reports that are required under part 803. This would allow manufacturers and FDA to more rapidly review, aggregate, and analyze related reports regarding a particular device, leading to more rapid isolation and identification of the underlying problems, and development of an appropriate solution to a particular concern.

Provide for More Rapid, More Efficient Resolution of Device Recalls. Delays in identifying recalled devices can result in the continued use of those devices on patients and involves an increased risk for patient harm. A device labeled with a UDI can be identified rapidly and with great precision and the UDI, particularly when combined with AIDC technology, will hasten the identification of devices that are the subject of a recall. The more rapidly a recall is implemented and completed, the more rapidly the risks presented are reduced and eliminated.

Better-Focused and More Effective FDA Safety Communication. By citing UDIs, FDA would be able to more precisely focus safety alerts, public health notifications, or other communications, eliminating confusion with similar devices and allowing more rapid responsive action. Users of similar devices that are not the subject of the safety alert would be relieved of the uncertainty concerning whether they have been exposed to, or are affected by, a problem or risk.

Provide an Easily-Accessible Source of Definitive Device Identification Information. While not required, inclusion of device identifiers in informational and educational materials, such as package inserts, training materials, educational materials, and other supplementary information, could provide a quick and useful means for patients and health care professionals to obtain additional information concerning a device, without having to provide that information in the document. This could allow the document to focus on its important core messages without the distraction of greater complexity, while a reader who wants those additional details could use the UDI to obtain information from the GUDID.

Additional Benefits. FDA expects the UDI system will provide additional benefits. For example, UDIs could be used to enhance management of the Strategic National Stockpile, inventory management, and the provision of high-quality medical services. UDIs will facilitate the development of more useful electronic patient records by allowing providers to electronically capture and record important information concerning the use (including implantation) of a device on a patient. UDIs could help identify similar devices in the event of a shortage, and could help detect counterfeit devices.

Standard Format for Dates Provided on a Device Label or Package. The rule would also contribute to improved identification of medical devices, and at the same time, better ensure the safe use of devices, by requiring dates on medical device labels to conform to a standard format—Month, Day, Year (e.g. JAN 1, 2012)—to ensure dates are unambiguous and clearly understood by device users.

Summary of the Major Provisions of the Regulatory Action in Question

This rule would require the label of medical devices and device packages to include a UDI, except where the rule provides for alternative placement of the UDI or provides an exception for a particular device or type of device. Each UDI would have to be provided in a plain-text version and in a form that uses AIDC technology. The UDI would also be required to be directly marked on the device itself for certain categories of devices, such as those that remain in use for extended periods of time and are likely to become separated from their labeling. The rule would require the submission of information concerning each device to a database that FDA intends to make public, to ensure that the UDI can be used to adequately identify the device through its distribution and use. The FDA database would not include patient information. The rule would also require dates on device labels and packages to be presented in a standard format.

The UDI system proposed by this rule builds on international regulatory cooperation activities and existing, internationally recognized standards relating to unique identification and data exchange. The rule would specify

the technical requirements of a UDI, which would consist of a portion that identifies the specific version or model of the device and the labeler of the device (the device identifier), and a portion that more precisely identifies the specific device by providing variable information, such as the lot or batch, the serial number, expiration date, or date of manufacture (the production identifier). Devices exempted from this proposed rule include devices, other than prescription devices, that are sold at retail establishments; this exception also applies to such a device when delivered directly to hospitals and other health care facilities. Also exempted are class I devices that FDA has by regulation exempted from the good manufacturing practice requirements of part 820 of this chapter. The production identifier would not be required for Class I devices. The proposed rule explains when a UDI is required and when its use must be discontinued. The rule would require all UDIs to be issued under a system operated by an FDA-accredited issuing agency. The rule would provide a process through which an applicant would seek FDA accreditation. The proposed rule specifies the information that the applicant would provide to FDA and the criteria FDA would apply in evaluating applications. The rule includes provision for the suspension or revocation of the accreditation of an issuing agency, and explains the circumstances under which FDA will, or may, act as an issuing agency.

Whenever a device must bear a UDI, the labeler of that device would be required to submit information concerning the device to FDA to facilitate the rapid identification of the device and the labeler, and to provide links to other FDA data. FDA will make this information available to the public through a variety of channels, including a new database, the GUDID.

The rule provides for appropriate exceptions and alternatives, ensuring that the costs and burdens are kept to a minimum.

A final rule would become effective in stages, over a period of seven years, to ensure a smooth implementation and to spread the costs and burdens of implementation over time, rather than having to be absorbed all at once.

BILLING CODE 4160–01–P

Table 1.--Costs and Benefits

Economic Data: Costs and Benefits Accounting Statement (2010 dollars)

				Units			
Category	Primary Estimate	Low Estimate	High Estimate	Year Dollars	Discount Rate	Period Covered	Notes
Benefits							
Annualized Monetized $millions/year					7%		
					3%		
Annualized Quantified					7%		
					3%		
Qualitative	More accurate and prompt identification of device related adverse events would lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls.						
Costs							
Annualized Monetized $millions/year	$68.4	$34.9	$101.8	2011	7%	10 years	Costs to foreign labelers are not included.
	$66.9	$34.1	$99.7	2011	3%	10 years	
Annualized Quantified					7%		
					3%		
Qualitative							
Transfers							
Federal Annualized Monetized $millions/year					7%		
					3%		
From/ To	From:			To:			
Other Annualized Monetized $millions/year					7%		
					3%		
From/To	From:			To:			
Effects							
State, Local or Tribal Government: No effect							
Small Business: The proposed rule may have a significant economic impact on a substantial number of small entities that label medical devices.							
Wages: No effect							
Growth: No effect							

BILLING CODE 4160–01–C

Table of Contents

I. Background
A. Objectives of the Proposed Rule
1. Reduce Medical Errors
2. Simplify the Integration of Device Use Information Into Data Systems
3. Provide for More Rapid Identification of Medical Devices With Adverse Events
4. Provide for More Rapid Development of Solutions to Reported Problems
5. Provide for More Rapid, More Efficient Resolution of Device Recalls
6. Better Focused and More Effective FDA Safety Communication

7. Provide an Easily-Accessible Source of Definitive Device Identification Information
8. Additional Benefits
B. Certain Public Health Benefits of UDI Depend on the Adoption of IT Systems by Hospitals and Other Healthcare Facilities and on Statistical Methodologies to Interpret the Data Aggregated Using the UDI
C. Principles That Guided Development of the Proposed Rule
D. Prior Consultation With the Health Care Community and Industry
II. Description of the Proposed Rule
A. Overview
B. UDI Labeling Requirements (Part 801)
1. Definitions
2. When would the requirement for UDI labeling go into effect, and where would the UDI have to appear?
3. How would UDI labeling requirements apply to a combination product and a device constituent part of a combination product?
4. How would UDI labeling requirements apply to a convenience kit?
5. Exceptions From, and Alternatives to, UDI Labeling Requirements
6. May a device that is exempt from UDI labeling requirements nevertheless be labeled with a UDI?
7. How would a UDI have to appear on a device label and on a device package?
8. When would a device have to be directly marked with a UDI?
9. After the requirement for UDI labeling goes into effect, may I continue to identify my device with the national health-related item code (NHRIC) or national drug code (NDC) number assigned to it?
10. Formatting of Dates Provided on Medical Device Labels
C. Requirements Relating to Issuing Agencies and Submission of Data to the Global Unique Device Identification Database (Part 830)
1. Definitions
2. What would be the requirements for the composition and issuance of a valid unique device identifier?
3. Use and Discontinuation of a Device Identifier
4. What changes would require a new device identifier?
5. How would FDA accredit an issuing agency?
6. What would be the responsibilities of an FDA-accredited issuing agency?
7. How would an issuing agency relinquish its accreditation, and how would FDA suspend or revoke an issuing agency's accreditation?
8. When would FDA act as an issuing agency?
9. What devices would be subject to GUDID data submission requirements?
10. Would FDA ever reject data submitted to the GUDID or remove data from the GUDID?
11. What device identification data would I have to submit to the GUDID?
12. How would I have to submit device identification data to the GUDID?
13. When would I have to submit device identification data to the GUDID?
14. Would I be permitted to submit information to the GUDID that is not required by FDA?
15. What records would a labeler be required to maintain concerning its UDIs?
16. Who would have access to the information I submit to the GUDID?
D. Conforming Amendments
III. Legal Authority for the Proposed Rule
IV. Analysis of Impacts
A. Summary of Costs
1. Costs to Domestic Labelers
2. Costs to Issuing Agencies
3. Costs to FDA to Establish and Maintain the GUDID
4. Cost to Foreign Labelers
5. Uncertainty
6. Alternatives
B. Summary of Regulatory Flexibility Analysis
C. Summary of Benefits
V. Information Collection Requirements
A. Reporting Requirements
B. Recordkeeping Requirements
C. Total Annual Cost Burden
VI. Environmental Impact
VII. Proposed Effective Date
VIII. Federalism
IX. Request for Comments
A. Submission of Comments
B. Specific Questions
X. References

I. Background

A. Objectives of the Proposed Rule

This rule is intended to substantially reduce existing obstacles to the adequate identification of medical devices used in the United States. By providing the means to rapidly and definitively identify a device and key attributes that affect its safe and effective use, the rule would reduce medical errors that result from misidentification of a device or confusion concerning its appropriate use. The identification system established under this rule would lead to more accurate reporting of adverse events by making it easier to identify the particular device involved prior to submitting a report. It would also allow FDA, healthcare providers, and industry to more rapidly extract useful information from adverse event reports, pinpoint the particular device at issue and thereby gain a better understanding of the underlying problems, and take appropriate, narrowly-focused, corrective action.

The rule will fulfill a statutory directive to establish a unique device identification system. Section 226 of FDAAA amended the FD&C Act to add new section 519(f), which directs FDA to promulgate regulations establishing a unique device identification system for medical devices: ''*Unique Device Identification System.* The Secretary shall promulgate regulations establishing a unique device identification system for medical devices requiring the label of devices to bear a unique identifier, unless the Secretary requires an alternative placement or provides an exception for a particular device or type of device. The unique identifier shall adequately identify the device through distribution and use, and may include information on the lot or serial number.''

Under the system that would be established by this proposed rule, two tools would be used together to identify a device: A UDI on the label and packaging of a device (represented both in plain text and through automatic identification and capture technology), and a new database, the GUDID, containing device identification information for each UDI. Certain devices, such as those that remain in use for extended periods of time and are likely to become separated from their labeling, would also be directly marked with a UDI, allowing accurate identification even when the device is no longer accompanied by its label or package. The principles behind the rule's requirements and exceptions regarding UDI labeling and the GUDID are discussed in more detail in section I.B of this document.

By requiring adequate identification of medical devices through distribution and use, the rule would serve several important public health objectives—

1. Reduce Medical Errors

Device-related medical errors are a serious problem. The presence of a UDI that is linked to identifying information in the GUDID database will facilitate rapid and accurate identification of a device, thereby removing a cause of confusion that can lead to inappropriate use of a device (e.g., confusing a sterile version or model with a version or model that is not sterile and which requires sterilization prior to use, or failing to recognize that a particular device is the subject of a recall or enforcement action). The presence of AIDC technology as part of a UDI would make it possible to ''scan'' a device at a patient's bedside and rapidly compare the device attributes reported to the GUDID with the medical order and the patient's history, thereby improving the accuracy of device use and providing greater assurance that a device is appropriate for the patient.

Providing a single, authoritative source of information—the GUDID—to facilitate the unambiguous identification of medical devices used in the United States.

The proposed system would allow anyone to use a device's UDI to look up identifying information in the GUDID

concerning the device, including: The FDA premarket submission number of the device; the proprietary, trade, or brand name of the device; any version or model number or similar reference; the Global Medical Device Nomenclature (GMDN) generic descriptor for the device; if the device is available in more than one size, the size of the particular version or model, together with the unit of measure; the total number of devices in the package; and an email address or telephone number for a contact who can provide additional information to FDA. Together, this information will permit positive identification of the device and prevent confusion with any similar device. Health care providers will no longer have to access multiple, inconsistent, and potentially incomplete sources in an attempt to identify a device, its key attributes, and a designated source for additional information.

Ensuring the accurate identification of certain devices, even when the device is separated from its label and package.

The rule would require some devices to be directly marked with a UDI, so that it will always be possible to positively identify the device, regardless of how long the device remains in use. These devices, by their intended or customary use, are typically separated from the labeling that accompanies delivery of the device to users:

- An implantable device;
- A device that is intended for more than one use and to be sterilized before each use; and
- Stand-alone software.

These devices involve unique risks to patients, and consequently it is particularly important to ensure the adequate identification of such devices throughout the entire product life cycle. For example, a device that is intended for more than one use, but which must be sterilized before each use, might be used over several years; during that time, the device package, with its label and any package insert, might be lost, leaving the user of the device uncertain as to whether the device needs to be sterilized, or just given a routine cleaning, and if sterilization is required, what type of sterilization process should be employed. The same is true for implanted devices and stand-alone software—loss of the device package and accompanying labeling can leave the user uncertain as to how to use the device, how to monitor its performance, or what actions should be taken in particular circumstances.

Providing rapid and continuous access to key information relating to the device.

FDA intends to provide Internet access to all data in the GUDID. Furthermore, once data concerning a device has been submitted to the GUDID, it will remain available long after production and marketing of the device has ceased. The GUDID will include information important to the identification of the device, but will not include patient information.

2. Simplify the Integration of Device Use Information Into Data Systems

UDIs, particularly when provided through AIDC technology, would allow rapid and accurate data acquisition, recording, and retrieval. The use of UDIs in patient records, particularly electronic patient records, would help avoid confusion among similar devices during an extended treatment period and where more than one health care provider is involved in the administration of a course of treatment. The use of UDIs in computerized physician order entry systems will help ensure that the intended device will be used in the treatment of a patient, rather than some similar device that may not fully meet the requirements of the health care professional who ordered the use of the device.

3. Provide for More Rapid Identification of Medical Devices With Adverse Events

An essential prerequisite to resolving adverse events is the timely and precise identification of the particular device or devices that may have a connection with an adverse event. The proposed UDI system would make this possible. From 2005 through 2009, FDA received an average of more than 492,000 adverse event reports involving devices each year. During this 5-year period, more than 17,700 reports involved a death, and more than 283,000 reports involved an injury.

Because reports come from multiple sources—manufacturers, device user facilities, importers, and voluntary reports from physicians and other concerned individuals—we often receive more than one report of a particular death or injury. Reviewing a significant number of reports, seeking essential missing information, and resolving inconsistencies among reports are major challenges, particularly when trying to identify recurring problems involving a particular device. Although we do not have precise statistics, many initial reports do not provide a precise identification of the specific device the report concerns and require extensive FDA follow-up to identify the specific device involved. The inclusion of UDIs in adverse event reports would lead to greater accuracy in reporting, and eliminate uncertainty concerning the identity of devices that are the subject of reports.

4. Provide for More Rapid Development of Solutions to Reported Problems

The inclusion of UDIs in adverse event reports would allow manufacturers and FDA to more rapidly review and analyze reports and identify the particular device at issue. This would permit more rapid isolation and identification of the underlying problems, and development of an appropriate solution to a particular concern. UDIs would also allow FDA, manufacturers, and the healthcare community to more accurately target safety alerts, recalls, and other corrective actions on the specific devices that are of concern. UDIs, particularly when provided using AIDC technology, would allow device user facilities and health care professionals to identify those devices more rapidly and with greater assurance, and prevent further patient exposure. At the same time, devices not implicated by the problem would be less likely to be ''swept up'' in an over-broad attempt to remove potentially hazardous devices.

5. Provide for More Rapid, More Efficient Resolution of Device Recalls

Currently, locating all devices subject to a recall is a time- and labor-intensive process. Manufacturers, distributors, and healthcare facilities often do not know how many recalled devices they have in stock, do not know exactly where those devices are located, and are sometimes uncertain which of several similar devices is the subject of a recall. Consequently, delays in identifying recalled devices can result in the continued use of those devices on patients in a variety of settings (e.g., hospitals, long-term care facilities, homecare environments) and involves an increased risk for patient harm. A device labeled with a UDI can be identified more rapidly and with greater precision than a device that does not bear a UDI. The use of AIDC technology, such as a bar code, would allow increased use of automation to speed efforts to identify specific devices that are the subject of a recall. The more rapidly a recall is implemented and completed, the more rapidly the risks presented are reduced and eliminated.

A class 1 recall is the most serious type of recall, and involves a situation where there is a reasonable probability that use of the device will cause serious injury or death. It is particularly important, therefore, that a class 1 recall be completed as rapidly as possible. The absence of a system that allows rapid

and reliable identification of the particular devices that are being recalled means hospitals and health care professionals have to rely on a variety of identification systems and examine a variety of attributes to identify a recalled device. A class 1 recall may direct that a device be returned to the manufacturer for exchange or refund, be destroyed, or be subjected to some other corrective action, such as a software upgrade. Any confusion or lack of complete clarity in identifying the device will undermine the effectiveness of the recall. Therefore, each recall attempts to identify the device as precisely as possible, but the great variation in devices and the terms used to describe them can make it difficult to describe a device with complete clarity. Here are some of the descriptors manufacturers used to identify specific devices subject to class 1 recalls during 2008 and 2009:

TABLE 2—EXAMPLES OF DESCRIPTORS USED TO IDENTIFY DEVICES SUBJECT TO CLASS 1 RECALLS DURING 2008 AND 2009

Descriptor	Example of a recall that used the descriptor
Catalog number	Pointe Scientific, Inc., Liquid Glucose Hexokinase Reagent (October 19, 2009).
Lot number	Covidien Pedi-Cap End-Tidal CO2 Detector (July 17, 2009).
Material Number	Boston Scientific NexStent Monorail, NexStent Carotid Stent and Monorail Delivery System (June 6, 2008).
Model number	Baxter Colleague Single and Triple Channel Volumetric Infusion Pumps (January 23, 2009).
Part number	Synthes USA, Ti Synex II Vertebral Body Replacement (September 14, 2009).
"Product code"	Smiths Medical ASD, Inc., Portex Uncuffed Pediatric-Sized Tracheal Tubes (August 25, 2009). Note: The "product code" used here is a code developed by Smiths Medical; it is not the product code used by FDA.
Product number	Physio Control, Inc. LifePak CR Plus Automated External Defibrillators (August 29, 2008).
Serial number	ZOLL Medical Corporation, ZOLL AED Plus Defibrillator (February 12, 2009).
Universal Product Code (UPC)	Luv N' Care Gel-Filled Teethers—"Nuby," "Cottontails," and "Playschool" (July 17, 2009).

Often, a recall must cite more than one descriptor to identify the specific devices subject to the recall. For example, a September 22, 2009, class 1 recall of the Penumbra, Inc., Neuron 6F 070 Delivery Catheter required reference to both the product catalog number and the lot number to determine whether a particular catheter was subject to the recall, and a June 17, 2009, class 1 recall of Abbott Vascular-Cardiac Therapies/Guidant Corp. POWERSAIL Coronary Dilatation Catheters referred to product designation, product number, lot number, and expiration date. Recalls would be expedited and simplified if a single descriptor, such as the proposed UDI, could serve to adequately identify all devices.

There is no uniformity in the placement or formatting of the descriptors presently used to identify devices, and no assurance that different companies are using a given term in the same way. The inconsistency in methods used to identify a recalled device complicates efforts to identify such devices that remain in possession of a patient, physician, or in a hospital's inventory and to complete the remedial action that would mitigate or eliminate the risk of further harm. These problems would be significantly reduced by the presence of UDIs on the labels and packaging of devices and the inclusion of UDIs in recall notification information. The inclusion of AIDC technology, such as a bar code or a RFID tag, would permit inventories to be checked more rapidly and would result in the more accurate detection and removal of recalled devices.

6. Better-Focused and More Effective FDA Safety Communication

By citing a device identifier, or a range of UDIs, FDA would be able to more precisely focus a safety alert, public health notification, or other communication on the particular device that is the subject of the alert, eliminating confusion with similar devices. Health care professionals and patients would be able to take responsive action more rapidly, and users of similar devices that are not the subject of the safety alert would not be faced with the uncertainty of not knowing whether they have been exposed to, or are affected by, a problem or risk.

7. Provide an Easily-Accessible Source of Definitive Device Identification Information

While not required, inclusion of device identifiers in informational materials, such as package inserts, could provide a quick and useful means for patients and health care professionals to obtain additional information concerning a device, without having to provide that information in the document. This could allow the document to focus on its important core messages without the distraction of greater complexity, while a reader who wants those additional details could use the UDI to obtain information from the GUDID.

8. Additional Benefits

FDA has concluded that a UDI system has the potential to provide additional benefits. For example, we expect UDIs could be used by other Federal agencies, such as the Centers for Medicare and Medicaid Services, the National Institutes of Health, the Centers for Disease Control and Prevention, the Department of Defense, the Department of Homeland Security, and the Department of Veterans Affairs, for a wide variety of purposes, ranging from management of the Strategic National Stockpile, inventory management, and the provision of high-quality medical services. Other benefits include facilitating the development of more useful electronic patient records by allowing providers to electronically capture and record important information concerning the use of a device on a patient. UDIs could help identify similar devices in the event of a shortage, and could reduce the potential for injury from counterfeit devices by offering a better way to detect a counterfeit product and remove it from the market.

The UDI system would provide a basic infrastructural element, which would allow unambiguous identification of medical devices throughout their lifecycle and would provide the foundation for a host of benefits. These may include improved device traceability, improved postmarket surveillance, and better security of devices through more effective detection and removal of counterfeit devices, and other

improvements that support FDA's public health mission.

Through our work with the Global Harmonization Task Force (GHTF) and foreign regulatory partners, we envision that the UDI system would support global public health initiatives with which FDA is concerned, including more efficient and effective cross-border identification of devices, adverse event reporting and postmarket surveillance, and would improve our ability to communicate and respond to issues and concerns about devices used not only in the United States, but in other nations as well.

B. Certain Public Health Benefits of UDI Depend on the Adoption of IT Systems by Hospitals and Other Healthcare Facilities and on Statistical Methodologies to Interpret the Data Aggregated Using the UDI

The full benefits of UDI require that hospitals and other healthcare facilities concurrently adopt information technology (IT) to fully realize the enhanced ability to identify devices throughout distribution and use. In order to realize its full potential benefits, UDI users must be able to store UDI information in various administrative, clinical and payment information systems, including EHRs. Though many such systems exist today, changes will need to be made in the systems to accommodate UDI.

The use of electronic health technology to reduce medical errors in healthcare facilities would require the use of scanners (many of which are already in place) and standard operating procedures for using newly developed systems that link critical patient information (such as latex sensitivity) with specific medical device information. Hospitals and other health-care facilities will choose to make investments in the new technology and methods if they expect it to be a cost-effective method to reduce errors and improve patient safety involving medical devices.

Putting a standardized unique device identifier on a device label is one step in creating systems that could reduce device related medical errors. The proposed rule would create a platform that would enhance the value of the new electronic health technologies and thereby encourage their development. But the proposed rule does not require hospitals and other health care facilities to make these changes.

C. Principles That Guided Development of the Proposed Rule

In developing our proposed system for identification of devices, FDA first developed several general objectives, or principles, that we then applied throughout the drafting of our proposed rule. Each of these principles is identified in this section I.B, with a brief discussion of how they are resolved in the proposed rule.

The UDI system should generally include all classes of devices, with appropriate exceptions.

The healthcare community needs to identify a wide range of medical devices in every medical specialty. When fully phased-in, the rule will apply to all three device classes; however, we are proposing to exempt class I devices from production identifiers and proposing full exceptions from UDI labeling and data reporting for certain very low risk devices and other categories of devices; see proposed §§ 801.30, 801.35, and 801.128(f). Although we are not aware of compelling reasons for other exemptions based on the device class or medical specialty, for example, we seek comments on this issue.

The UDI system should be based on existing, broadly-accepted standards.

Basing the UDI system on existing, accepted standards ensures that all UDIs will be unique, broadly compatible, and broadly accepted for use by the U.S. healthcare community and in international commerce. By incorporating these existing standards into our proposed system, we avoid the confusion, inconsistency, and inefficiency that would result if every labeler created their own device identifiers without regard for the needs of the healthcare community. Therefore, the UDI system we are proposing would incorporate by reference four international standards: International Organization for Standardization/ International Electrotechnical Commission (ISO/IEC) 646:1991, Information technology—ISO 7-bit coded character set for information interchange; ISO/IEC 15459–4:2006(E), Information technology—Unique identifiers—Part 2: Registration procedures; ISO/IEC 15459–4:2008, Information technology—Unique identifiers—Part 4: Individual items; and ISO/IEC 15459–6:2007, Information technology—Part 6: Unique identifier for product groupings. See proposed § 830.10. In addition, all widely-used AIDC technologies—e.g., bar codes, RFID tags, and near-field communication are based on established, broadly-supported standards. (Ref. 1) A multiplicity of nonstandardized systems would impose excessive costs on device user facilities and others, would provide no assurance that identifiers would be unique, would run counter to efforts to achieve international harmonization with regard to the identification of devices, and would greatly complicate FDA efforts to identify and resolve adverse events and other problems involving devices.

The UDI system should recognize that the private sector has already implemented device identification systems, and, where possible, the rule should not require significant alteration of those systems.

FDA is aware of two existing device identification systems that are based on the ISO/IEC standards discussed in the preceding paragraph. The International not-for-profit association known as ''GS1'' operates a system that uses a Global Trade Identification Number (GTIN) to identify a device; GS1 also operates the Universal Product Code (UPC) system that is used to identify most items sold by retail establishments in the United States. (Ref. 2) The Health Industry Business Communications Council (HIBCC) operates a system that encodes an identifier in a Health Industry Bar Code (HIBC) to identify a device. (Ref. 3) We believe roughly 35 to 50 percent of all medical devices used in the United States are already labeled with device identifiers that conform to one of the systems operated by these two organizations (a 2005 ECRI Institute report, ''Automatic Identification of Medical Devices,'' cited survey data suggesting bar codes were currently found on 25 percent of class I devices, 44 percent of class II devices, and 50 percent of class III devices) (Ref. 4). These existing systems are providing valuable services to device user facilities (hospitals, nursing homes, and other facilities) and to health care professionals. These systems have proven to be successful in creating unique identifiers that are in widespread use in systems used by hospitals, healthcare professionals, and industry.

Because these existing systems include tightly-integrated functions that go far beyond simply identifying devices—functions such as inventory management and enabling commercial transactions that are not part of FDA's public health responsibilities and are outside our statutory authority—FDA believes it would be inefficient and counterproductive to try to replace the existing systems with a single, FDA-designed system of device identifiers. Because any FDA system would necessarily have a narrow scope limited to the adequate identification of devices, labelers would have to continue to use the existing systems as well as the FDA system, which would result in duplication of effort, substantial

additional costs, and potentially confusing identification of devices that would undermine our public health objectives. Consequently, FDA's proposed UDI system will permit continued use of these existing systems, so long as the administering organizations apply for and obtain FDA accreditation, as discussed under question 5 of section II.C of this document. The GUDID will allow rapid access to key information concerning any device labeled with a UDI, regardless of the system used to assign the UDI.

Burdens should be minimized.

We have honed our proposed data submission requirements to minimize overlap and avoid inconsistency with other existing FDA regulatory requirements, such as establishment registration and device listing. We are proposing to require the submission of fewer types of data than those identified and discussed in the public meetings (Ref. 5) that influenced development of this proposed rule. See proposed § 830.310. We are requesting comments on whether we have adequately minimized overlap and inconsistency, and whether we should require or permit the submission of additional data that may be useful to the healthcare community.

The UDI system should be open to technological advancements.

The proposed rule would require each UDI to be provided in both a plain-text form and a form that uses AIDC technology. See proposed § 801.45. FDA would not require use of any particular technology for the AIDC form of the UDI. The system would permit the use of any type of bar code, RFID tag, near-field communication, or any other technology, whether existing at the present time or developed in the future. This would allow for technological evolution and advancement without prior FDA approval. FDA expects that a new technology would be deployed only after considerable consultation among issuing agencies, device user facilities, healthcare professionals, and device manufacturers, and we believe such decisions are best left in the hands of the healthcare community.

The UDI system should be designed to integrate smoothly with other FDA systems, such as registration and listing, postmarket surveillance, and adverse event reporting.

We have taken care to avoid conflict and minimize overlap with existing regulatory requirements, and we have included several conforming amendments to existing regulatory requirements to ensure UDIs are integrated in our regulatory processes wherever appropriate and feasible. For example, Part 810—Medical Device Recall Authority, Part 820—Quality System Regulation and Part 821—Medical Device Tracking Requirements.

Requirements should be phased in over several years to ensure smooth and effective implementation.

Pursuant to the proposed tiered effective dates, UDI requirements would be phased in over seven years following publication of a final rule (see table 7 of this document). This would allow all participants—FDA, industry, the health care community, and other government agencies—ample time to become familiar with and phase-in the rule's labeling and data submission requirements. This approach also provides FDA the opportunity to identify unforeseen weaknesses or problems in our implementation of the UDI system and to make appropriate mid-course corrections within the scope and authority of this rule, if finalized. We are proposing to phase in the rule's requirements by class because this will allow us to focus first on devices that have higher risks.

The UDI system should foster innovation by, and competition among, issuing agencies.

The proposed rule would allow for accreditation of multiple issuing agencies, see proposed § 830.100, so that the varying needs of labelers and users of different types of devices can be met by different systems with differing levels of complexity and function. Because all issuing agencies would have to employ systems based on the same technical standards, and would have to meet the same accreditation requirements, each system would still be broadly compatible with other systems. Furthermore, all systems would employ the FDA-administered GUDID database, which would serve as the single authoritative source of information for the positive identification of any device labeled with a UDI. We will maintain a list of all FDA-accredited issuing agencies on our Internet site.

There will be effective FDA oversight of issuing agencies.

Oversight is necessary to ensure that all device identifiers are unique and meet the proposed requirements, and that all system users are treated fairly. FDA is proposing to require that any organization that wishes to issue UDIs be accredited by FDA. See proposed § 830.20(a). We have included accreditation criteria and information submission requirements designed to ensure that only a well-qualified organization that would issue identifiers that comply with the proposed rule would be permitted to serve as an issuing agency. See proposed §§ 830.100 and 830.110.

The UDI system should provide for appropriate regulatory flexibility, including exceptions and alternatives.

Where possible, we have included reasonable flexibility in our proposal. For example, certain categories of devices would be excepted from UDI requirements, see proposed § 801.30, and labelers may request an exception or propose an alternative that would, for example, provide for more effective identification of a device, see proposed § 801.35. Direct marking requirements would apply only to certain narrow categories of devices and there would be some flexibility in how this requirement may be satisfied, see proposed § 801.50. We seek comment on whether these flexibilities achieve the appropriate balance.

Safeguards should be provided to protect small businesses.

We seek to do this in two ways. First, a business can choose to use any system provided by any accredited issuing agency, which will give the labeler a choice among a range of services at a range of fees. We anticipate that the participation of multiple issuing agencies will also lead to competition that will help ensure fees are reasonable. Second, FDA may act as an issuing agency if we find that a significant number of small businesses will be substantially harmed by the fees assessed by all accredited issuing agencies, see proposed § 830.200. If FDA acts as an issuing agency, any business would be permitted to use the FDA system and, under current law, there would be no fee, see proposed § 830.210. We expect this provision will encourage issuing agencies to be sensitive and responsive to the needs of small businesses.

The establishment of a publicly accessible GUDID database is a critical component of an effective UDI system.

It is important to understand that a UDI is simply a numerical or alphanumerical code and on its face is not itself intended to communicate any information directly concerning a device; you would not, for example, be able to parse out a segment that indicates that the device is a cardiovascular device, or that the device is packaged sterile, or that the device is marketed under a particular FDA premarket submission. Instead, the UDI would function as a reference number allowing you to find data concerning the device in an FDA database, the GUDID. The real value of a UDI is derived from its connection to corresponding information identifying the version or

model of the device that bears the UDI, and an effective system of device identification requires both a UDI and a database to provide information concerning the particular version or model identified by that UDI. Our proposal would require the submission of information essential to the identification of a device, which would be provided freely and publicly through a single authoritative source, the GUDID.

In order to serve the public health purposes discussed in section I.A of this document, the UDI system requires a GUDID that is freely and easily accessible to all—hospitals and other device user facilities, health care practitioners, patients, other government agencies, academia, industry, and the general public. None of the information that we are proposing to collect would constitute trade secret information, confidential commercial information, or personal privacy information, and public disclosure of this information would not be prohibited. Open access to the GUDID would also encourage the integration of UDI data into healthcare delivery support systems, electronic medical records, and procurement, inventory management, and accounting systems, and would allow those systems to work together more effectively and efficiently.

D. Prior Consultation With the Health Care Community and Industry

In the **Federal Register** of February 26, 2004 (69 FR 9120), we published a final rule requiring bar codes on certain human drug and biological products to help reduce medication errors in hospitals and other health care settings. The bar code is intended to enable health care professionals to use bar code scanning equipment in conjunction with computerized medication administration systems to verify that the right drug, in the right dose, is being given to the right patient at the right time. This rule, now codified at 21 CFR 201.25 and 610.67, requires that manufacturers encode the unique National Drug Code (NDC) number in a linear bar code on the product's label. The bar code rule, however, does not apply to medical devices. In the preamble to the bar code rule, we stated that, unlike drugs, medical devices do not have a standardized, unique identifying system comparable to the NDC number, and that the absence of such a system complicates efforts to put bar codes on medical devices for purposes of preventing medical errors (69 FR 9120 at 9132).

Since the issuance of the final bar code rule, various entities have asked that we revisit the issue of bar coding for medical devices to improve patient safety, quality of care, and cost effectiveness of health care, e.g., by improving delivery and supply chain efficiency. In response to this, in 2005 FDA met with various stakeholders, including device manufacturers and distributors, hospital associations, and other Federal agencies to solicit information and comments about employing a uniform system for the unique identification of medical devices. As a result of these meetings, FDA believes the majority of stakeholders support the development of a uniform system of unique identifiers as a way to improve patient safety and recognize other ancillary benefits such as better management of the purchase, distribution, and use of medical devices. However, there were a variety of experiences and opinions about how best to implement such a system. In 2006, we commissioned a report from Eastern Research Group, Inc. (ERG), concerning the benefits, costs, and issues with developing and implementing a UDI System. (Ref. 6) Thereafter, we published a notice in the **Federal Register** of August 11, 2006 (71 FR 46233), requesting comments to help us understand how a unique device identification system could improve patient safety, for example, by reducing medical errors, facilitating device recalls, and improving medical device adverse event reporting.

We used the comments responding to the August 2006 **Federal Register** notice to help develop the agenda and topics for a public meeting held on October 25, 2006. (Ref. 5) The information we received helped us move forward with development of a proposed rule, which was further spurred by enactment of FDAAA.

FDA held a public workshop on February 12, 2009, to discuss issues relating to establishment of a UDI system (see 74 FR 2601, January 15, 2009). (Ref. 5) We asked device identification standards organizations to discuss the development and use of UDI standards, including the use of production identifiers. We asked device manufacturers to discuss the use of standards and the marking of devices with UDIs. We also discussed the potential development and use of a UDI database in general and with respect to particular attributes, as well as issues relating to implementation of a UDI system by interested stakeholders (e.g., distributors, hospitals, payors). We asked device manufacturers to describe their current practices for applying standards to medical devices, including identifiers on medical device labels, and managing medical device identifier data. We also requested information regarding the difficulties and costs involved in adding a UDI to a device's label, including effects on manufacturing and labeling processes and expected capital and operating costs. We asked device user facilities (hospitals, nursing homes, and clinics) to describe how a UDI system could be used, the costs involved, whether a UDI system would require any change in operations, and how UDIs would affect adverse event reporting and recall management. We asked all interested persons to submit comments, including answers to any of these questions, to a regulatory docket, FDA–2008–N–0661, CDRH 200866—Unique Device Identification System; Public Workshop. Comments received by the docket may be reviewed at *http://www.regulations.gov* by searching for ''FDA–2008–N–0661'' (enter this text in the search field following ''Enter Keyword or ID'').

We carefully reviewed and considered all comments during our development of this proposed rule.

II. Description of the Proposed Rule

A. Overview

The core requirements summarized here provide context for the more detailed discussions that follow:

- Proposed § 801.18 provides for standardized formatting of dates on medical device labels, eliminating any possibility of confusion from date formats that might be interpreted in more than one way.
- The labeler of each device would be responsible for meeting labeling and data submission requirements under this proposal. The labeler would, in most instances, be the manufacturer of the device. The term ''labeler'' is defined at proposed § 801.3, and is discussed in section II.B.1 of this document.
- Unless the device is excepted, the label of a medical device, and a device package, marketed in the United States would be required to bear a UDI; this requirement would be phased in over 5 years. See proposed § 801.20.
- The UDI would have to be provided in two forms: easily-readable plain-text and AIDC technology. See proposed § 801.45. These two forms ensure that the UDI of a device would be readily discernable to patients and health care professionals and to automated systems used to identify and manage devices.
- The proposed rule provides several categorical exceptions, proposed § 801.30, as well as case-by-case

exceptions and alternatives, proposed §§ 801.35 and 801.128(f)(2).

• Direct marking would be required for certain categories of devices, with exceptions. For each device subject to direct marking, this requirement would go into effect two years after the base UDI labeling requirement goes into effect for that device. See proposed § 801.50.

• Whenever a device must be labeled with a UDI, the labeler (the person who causes the label to be applied to the device) would have to submit data concerning that device to the GUDID database. See proposed § 830.320. This information would have to be submitted no later than the date the label of the device must bear a UDI, and would have to be updated when changes occur. See proposed § 830.330. Exceptions are identified in the detailed discussion of part 830. This data would be freely available to the public and would provide the information necessary to identify a device labeled with a UDI.

• UDI labeling requirements would also apply to—

○ Certain combination products;

○ In most instances, to the device constituent parts of combination products;

○ Convenience kits; and

○ A device included in a convenience kit, except for a single use device.

The terms ''combination product'' and ''convenience kit'' are defined at proposed § 801.3 and are discussed in section II.B.1 of this document.

• UDIs would be issued under systems operated by FDA-accredited ''issuing agencies'' and conform to certain international standards, incorporated by reference at proposed § 830.10. A different UDI would be required for each version or model of a device. These terms are defined at proposed § 830.3.

• In order to provide for efficient implementation of this rule, we propose to phase in its requirements over several years. Table 7 of this document, Effective Dates of UDI Regulatory Requirements, summarizes how we would phase in the requirements proposed in this rule.

B. UDI Labeling Requirements (Part 801)

Part 801 (21 CFR part 801) provides FDA's general medical device labeling requirements. All devices are subject to subparts A through E of part 801, while subpart H provides special requirements for specific devices; subparts B, F, and G are presently reserved. FDA provides additional labeling requirements in subpart B of part 809 that apply only to in vitro diagnostic products. FDA is proposing amendments to part 801 to provide UDI labeling requirements for devices. The changes we are proposing to part 801 provide a new definitions section, see proposed § 801.3; a new provision standardizing the format of dates provided on medical device labels, see proposed § 801.18; new subpart B, Labeling Requirements for Unique Device Identification; and a proposed amendment to § 801.128, regarding exceptions or alternatives to labeling requirements for medical devices held by the Strategic National Stockpile. Several definitions proposed for inclusion in part 801 would also be included in new part 830, Unique Device Identification. A proposed amendment to § 801.119 (the labeling regulation specifically applicable to in vitro diagnostic devices) would make it clear that all UDI labeling requirements apply to such devices. In order to avoid confusion with regard to the use of National Health Related Item Codes (NHRICs) and NDC numbers currently used to identify some devices, proposed § 801.57 would terminate the use of these legacy identifiers on the date the device must be labeled with a UDI; those dates are specified in proposed § 801.20(b).

1. Definitions

The UDI regulation would not change the meaning of any term currently defined in Part 801. We are proposing, in new § 801.3, several definitions relating to the use of UDIs on device labels. New § 801.3 would not affect the existing definitions in part 801, and would not consolidate existing part 801 definitions into a single section. Each definition proposed in § 801.3 is discussed in this section II.B.1.

Automatic identification and data capture (AIDC) technology would be any technology that conveys the UDI or the device identifier of a device in a form that can be entered into an electronic patient record or other computer systems via an automated process. AIDC technologies most often use bar codes, RFID, or near field communication, but this rule does not specify the technologies that may be used and does not prohibit the use of any particular technology. We believe it is best to leave decisions concerning the selection and use of any particular AIDC technology to issuing agencies, the labeler, and the health care community in order to avoid unintentional interference with the development and adoption of new and improved AIDC technology.

Center Director—This would be the Director of the Center for Devices and Radiological Health, or the Director of the Center for Biologics Evaluation and Research, depending on which Center has lead responsibility for a particular device.

Combination product—Within the context of the UDI system, a combination product will involve at least one device and at least one drug or one biological product. The term is defined by 21 CFR 3.2(e), and would have the same meaning here. A combination product whose primary mode of action is that of a device is subject to UDI labeling requirements; see proposed § 801.25(a). The constituent parts of a combination product would continue to be subject to all requirements that ordinarily apply to the particular type of product (device; drug; biologic), and this rule would require each device constituent part of a combination product to be labeled with its own UDI, regardless of whether the combination product is subject to UDI labeling. For example, the device constituent parts of a combination product whose primary mode of action is that of a drug would be subject to UDI labeling requirements; see proposed §§ 801.25(b). However, a device constituent part of a combination product would not be required to have a UDI if it is physically, chemically, or otherwise combined with other constituents of the combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product; see proposed § 801.30(a)(11). A drug-eluting stent is an example of a combination product where the device constituent part—the bare-metal stent—has been combined with a drug constituent in such a way that it is not possible for the stent to the used except as part of the combination product.

Convenience kit—When two or more different types of medical devices are packaged together for the convenience of the user, the result is a convenience kit. A convenience kit would have to have a UDI; see proposed § 801.25(c). Each device in a convenience kit would have to meet all FDA requirements that normally apply to a device of that type, including having its own UDI distinct from that of the convenience kit, except for single use devices included in a convenience kit; see proposed § 801.25(d).

Device package—This definition is intended to clarify which articles would be required to bear a UDI under proposed § 801.20(a)(2). It is also intended to clarify the scope of the term *version or model,* which includes this term in its definition (consistent with current business practice, a change to the quantity of devices in a device

package is one of the changes that results in a new version or model; see proposed § 830.50 and related discussion under the heading ''*Version or model''* of this section II.B.1). Since these requirements would be consistent with current practices—the existing GS1 and HIBCC systems, and the standards that underlie both of those systems and the proposed FDA UDI system—they will be well-understood, there will be no need for multiple identifiers on device packages, and we will avoid any need for duplicative and inconsistent identification.

This term would be defined as a package that contains a fixed quantity of devices. A package may be a box or any other type of container in which devices are distributed or sold, and would include packages within other packages. Unlike a shipping container, whose contents and quantity may vary between shipments, the quantity of a device package would remain constant. If you change the quantity in a device package, you will have created a new device package. FDA is proposing this definition because the existing GS1 and HIBCC systems, and the international standards that underlie those systems, all require differentiation among packages that contain different quantities of a device in order to facilitate inventory management, order processing, and other business purposes. The proposed UDI system needs to recognize and accommodate these existing business systems and practices to avoid creating requirements that would lead the healthcare community and industry to have to devise a supplementary system to implement the UDI system, which would unnecessarily impose added costs and burdens and potentially undermine the effectiveness of the UDI system if multiple types of identifiers were used. We invite comment on this understanding of current systems and the extent to which the proposed definition accommodates current practice. A change to a device package that does not make substantive changes to the information conveyed thereon or to the quantity in the package would not result in a new device package; for example, a change in graphics, fonts, colors, or formatting would not result in a new device package, but a change in quantity would result in a new device package.

Finished device—This term is defined because it is used in the definition of *lot or batch,* which is discussed below. In turn, the definition of *lot or batch* is based on a definition in FDA's Quality System Regulation.

Expiration date—This term is not defined in any other medical device regulation, but is in common use and an expiration date (or ''use by'' date) is frequently provided on the labels of FDA-regulated products, including medical devices. The proposed definition is intended to capture the term's ordinary meaning, which we take to be the date by which the label of a device states the device must or should be used. We are defining the term because it is one of four production identifiers that, when provided on a device's label, would also have to be provided through a UDI (the other production identifiers are: The lot or batch of a device; the serial number of a device; and the date a device was manufactured); see the proposed definition of unique device identifier, which includes production identifier.

FDA, we, or *us* would mean the Food and Drug Administration.

Global Unique Device Identification Database (GUDID) would mean the FDA administered database that serves as a repository of information to facilitate the identification of medical devices through their distribution and use. This term would have the same definition in both parts 801 and 830; more information is provided later in this preamble, in the discussion of definitions used in part 830.

Implantable device would mean a device that is intended to be placed in a surgically or naturally formed cavity of the human body. A device would be regarded as an implantable device only if it is intended to remain implanted continuously for a period of 30 days or more, unless the Commissioner determines otherwise in order to protect human health.

Label would have the same meaning as is provided by section 201(k) of the FD&C Act.

Labeler—This term would mean any person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label. In most instances, the labeler would be the device manufacturer, but the labeler may be a specification developer, a single-use device reprocessor, a convenience kit assembler, a repackager, or a relabeler. The labeler would be responsible for meeting the UDI labeling requirements proposed for inclusion in part 801.

The addition of the name of, and contact information for, a person who distributes the device, without making any other changes to the label, would not be a modification for the purposes of determining whether a person is the labeler. If a modification to the label extends beyond this narrow latitude, the person who causes the modification to be made will be a labeler and will be subject to the requirements of this rule.

The term *labeler* does not include a person who labels a device, or who modifies the label of a device, pursuant to the instructions of the person who actually places the device into interstate commerce. Thus, a contractor who labels a device, following the instructions of the specification developer or manufacturer, would not be the labeler. Instead, the person who ''causes'' the label to be applied or modified—the person who provided the labeling instructions, whose name is on the device, and who actually places the device into interstate commerce (FDA refers to such a person as a specification developer)—would be the labeler and would be responsible for meeting UDI labeling requirements.

Lot or batch—This definition is based on the definition used in the Quality System Regulation (QSR), § 820.3(m), but deletes the QSR language concerning components and the condition ''whether or not it is packaged, labeled, or sterilized.'' This is because UDI requirements would not apply until the device is labeled, and sterilization would not be a factor in determining whether a device would have to bear a UDI (the need for sterilization prior to each use would be relevant in determining whether a device must be directly marked under proposed § 801.50). Lot or batch is one of four production identifiers that, when provided on a device's label, must be provided through a UDI. See the proposed definition of unique device identifier.

Shipping container—A shipping container would be a package, container, or pallet that is used for the shipment or transportation of devices from one point to another and whose contents may vary from one shipment to another. This rule would not require a UDI to be placed on any shipping container; see proposed § 801.30(b).

Specification—This definition is intended to clarify the scope of ''specification'' as used in the definition of *version or model.* This definition builds on the definition of ''specification'' provided by the QSR, see § 820.3(y), but uses ''device'' instead of ''product, process, service, or other activity,'' because the QSR has a wider scope.

Unique device identifier (UDI)—The definition cites proposed § 830.20, which specifies the requirements for a valid UDI, and the statutory mandate of

the UDI system: To adequately identify a device through its distribution and use. A UDI may consist of two parts—

- A *device identifier* that identifies the specific version or model of a device and the labeler of that device; and
- A *production identifier* that identifies one or more of the following, when present on the label of the device:
  - The lot or batch within which a device was manufactured;
  - The serial number of a specific device;
  - The expiration date of a specific device;
  - The date a specific device was manufactured.

The production identifier would not be required for class I devices; see § 801.30(c). The device identifier would always have to be present in a UDI. The production identifier must be present whenever a lot or batch number, serial number, date of manufacture, or expiration date appears on the label of the device, except for class I devices. Because most device labels provide at least one of these identifiers, most UDIs would have to include a production identifier. This proposed rule would not itself require any production identifier to appear on a device label, but other FDA regulations and conditions of approval may require one or more to be provided on the label of a particular device or type of device, and many labelers already label their devices with one or more production identifiers.

As discussed in section I.B of this document, the UDI is not structured to provide direct information concerning a device; the device identifier is a reference number that allows you to find data concerning the device in an FDA database, the GUDID. Whenever this proposed rule states that a UDI ''identifies'' a device, we are referring to the use of the UDI in conjunction with information concerning the device that the labeler of the device has submitted to the GUDID.

Universal product code (UPC)—A universal product code is an identifier used to identify a company and product name for an item sold at retail in the United States. UPCs are based on the GS1 ''General Specification,'' an international standard.

Version or model—This definition identifies the characteristics that make a device unique. Each version or model would be required to have its own device identifier, and when you add a new version or model, or make a change that results in a new version or model, that addition or change would require use of a new device identifier and would require you to submit information concerning the version or model to the GUDID. See proposed §§ 830.50 and 830.330. The definition combines elements from definitions in the QSR for finished device and lot or batch, §§ 820.3(l) and (m), and includes language to make clear that each distinct device package (each containing a different quantity of devices) would constitute a different version or model (and would therefore have its own device identifier).

2. When would the requirement for UDI labeling go into effect, and where would the UDI have to appear?

Proposed § 801.20(a) would require medical device labels and device packages to bear a UDI. Exceptions to this general rule are provided by proposed §§ 801.30, 801.35, and 801.128(f)(2), and are discussed in section II.B.7 of this document.

Thus, if a device is sold in individual device packages, which are sold in boxes of five device packages, which are sold in cartons that contain ten boxes of five device packages, a UDI would be required to appear on the individual device package, on the box of five packages (which is itself a ''device package,'' see proposed 801.3, because it contains a fixed number of devices), and on the carton of ten boxes of five device packages (again, because the carton is a ''device package''). This reflects existing practice within the health care community; both the existing GS1 and HIBCC systems, and the standards that underline those systems and the proposed FDA UDI system, follow this approach, and place an unique identifier on every distinct device package (Ref. 7).

The presence of a UDI on each device package would improve the effectiveness and efficiency of recalls and other corrective actions targeting potentially harmful devices. For example, the presence of a UDI on outer packaging will enable distributors, hospitals, and others to enter it into their system upon receipt. Then they will know exactly what devices they have or had in their possession when, and if, there is a recall, tampering, counterfeiting, or other problems with the device at a later date, they can simply type in the applicable UDIs to determine whether they have (or had) the device in their possession. If there were no UDI on the outer packaging, the box or other type of container would need to be opened to access it, which could facilitate tampering and contribute to the very problems that the UDI system is designed to remedy.

By requiring a UDI for device packages, the proposed UDI system strives for uniform identification of devices throughout their path of distribution and use. This will facilitate the unambiguous identification of devices wherever they are located and avoid the confusion that would be created by the use of multiple identifiers, and that would undermine the public health purposes of the rule. At present, most manufacturers generally follow this approach, and place an identifier on every device package (Ref. 7). If UDIs were not required to appear on all device packages, manufacturers would continue to use their existing identification systems, which would result in the use of multiple types of identifiers for a particular device. This would produce confusion and inhibit the rapid and precise identification of devices that is the goal of this rule. The fact that the proposed requirements are consistent with existing practices also lowers the burden of compliance.

The requirement for device labels and device packages to bear a UDI would be phased in over several years:

- UDI labeling requirements will take effect for class III devices and devices licensed under the Public Health Service Act beginning 1 year after we publish a final rule; see proposed § 801.20(b)(1).
- UDI labeling requirements will take effect for class II devices beginning 3 years after we publish a final rule; see proposed § 801.20(b)(2).
- UDI labeling requirements will take effect for class I devices and devices not classified into class I, II, or III beginning 5 years after we publish a final rule; see proposed § 801.20(b)(3) and (b)(4).

See table 7 of this document for a summary of these and other effective dates proposed for this rule.

Phasing in UDI labeling requirements over several years allows all parties—FDA, device labelers, hospitals and other device user facilities, and health care professionals—to prepare for, and implement, the requirements in an orderly, efficient manner. It also provides FDA the opportunity to clarify any confusion in implementation within the scope and authority of this rule, after it is finalized. We are proposing to phase in UDI labeling and data submission requirements by class because this will allow us to focus first on devices that have higher risks. Section 801.25 explains how these timeframes apply to convenience kits and combination products.

The data reporting requirements of part 830 would go into effect at the same time as the UDI labeling requirements, see proposed § 830.330(a), using the same phased-in schedule as is set forth in proposed § 801.20(b). These parallel

requirements—UDI labeling and data reporting—would go into effect together because, as discussed in section I.B of this document, the UDI would have limited value without the ability to look up information concerning the device in a database.

3. How would UDI labeling requirements apply to a combination product and a device constituent part of a combination product?

Proposed § 801.25(a) would require a UDI on the label and device package of every combination product whose primary mode of action is that of a device, *regardless* of which FDA Center has been designated as having primary jurisdiction for the premarket review and regulation of the product (in the great majority of cases where the combination product has a primary mode of action of a device, the lead Center will be the Center for Devices and Radiological Health). If FDA has determined that the primary mode of action of a combination product is not that of a device, we would not require a UDI on the label or package of the combination product. For a combination product with a primary mode of action other than that of a device, we envision that the combination product generally would be identified by an NDC (see 21 CFR 201.25, 610.67; 71 FR 51276, August 29, 2006).

Proposed § 801.25(b) would require a UDI on the label and (when present) the device package of each device constituent part of a combination product, regardless of the primary mode of action of the combination product, which Center has the lead responsibility for the combination product, and whether the label and package of the combination product are required to bear a UDI, except where the device constituent part is physically, chemically, or otherwise combined with other constituents of the combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product; see proposed § 801.30(a)(11). Thus, whenever it is possible for a device constituent part to be used separately from a combination product with a device primary mode of action, a UDI would be required to identify the combination product, and a different UDI would be required for each device constituent part that can be used separately from the use of the combination product. This approach is necessary both for the accurate identification of the product, and to facilitate effective recalls and adverse event reporting. For example, there may be a problem with a device constituent part of a drug-device combination product that applies only to the device when it is part of the combination product, or only to the device when used separately from the combination product. We seek comments on this approach to UDI applicability to combination products.

With the exception of those products where it is not possible for the device constituent part to be used except as part of the combination product, the presence of either a UDI or an NDC on the label and package of combination products, and a UDI on the label and any device package of each device constituent part thereof, would assure precise identification.

4. How would UDI labeling requirements apply to a convenience kit?

A convenience kit consists of two or more different types of medical devices packaged together for the convenience of the user. We propose to require a UDI on the label of and device package of each convenience kit. See proposed § 801.25(c). We would also require each device in a convenience kit to bear its own UDI (a UDI distinct from that of the convenience kit) on its label and device package unless the included device is intended for a single use (e.g., an adhesive bandage). See proposed § 801.25(d). The reason for requiring a UDI on the label and device package of each device in a convenience kit is that devices that are intended for more than a single use, such as surgical instruments that are sometimes packaged as parts of kits, often become separated from the convenience kit, and are used at some later time. Without a UDI, there is no assurance that the user will be able to adequately identify the device and be aware of relevant data in the GUDID database concerning that device. Because this potential problem is much less of a concern for a device intended for a single use, a single-use device included in a convenience kit would not need to bear a UDI; see proposed § 801.30(a)(12). Inclusion in a convenience kit would have no effect on whether a device must be directly marked pursuant to proposed § 801.50; if § 801.50 requires the device to be directly marked, the device must be directly marked regardless of whether it is included in a convenience kit.

5. Exceptions From, and Alternatives to, UDI Labeling Requirements

The proposed rule would provide several exceptions to our UDI labeling requirements. The exceptions derive from statutory provisions or are designed to make the overall UDI system more efficient and to ensure that the burdens imposed by the UDI system are reasonably balanced with its benefits. A labeler that chooses for business or other reasons to voluntarily comply with any provision from which the labeler is excepted may, of course, do so.

Proposed § 801.30(a)(1) provides an exception for devices, other than prescription devices, that are sold at retail establishments, such as drug stores; this exception would also apply to such devices when sold directly to a hospital or other health care facility. A wide range of devices is available at retail, including automatic external defibrillators, insulin syringes, glucometers, tampons, thermometers, toothbrushes, bandages, and more. We are providing this exception to reduce the overall burden of the proposed rule, given that it is the prevailing industry practice to label such devices with a UPC, which may serve as an adequate substitute for devices sold over-the-counter at retail. For those labelers that choose to submit data to the GUDID on a voluntary basis, a UPC may serve as a UDI for devices sold at retail for purposes of submission of data to the GUDID; see proposed § 830.300(c).

Some devices sold over-the-counter at retail have been the subject of recalls and adverse events, and we would likely see significant benefits from participation in the UDI system. It is also possible that many other devices sold over-the-counter at retail would benefit from participating in the UDI system, and that those benefits would outweigh the costs of participation. Because of our uncertainty regarding the balance of interests regarding proposed §§ 801.30(a)(1), FDA requests comments on the extent to which devices sold in retail establishments should be subject to the requirements of this proposed rule. Should these devices be excepted as provided by proposed §§ 801.30(a)(1), or should they instead be subject to the proposed rule in the same manner and to the same extent as other devices?

Proposed § 801.30(a)(2) would except from UDI labeling requirements any class I device that FDA has by regulation exempted from the good manufacturing practice (GMP) requirements of part 820, the Quality Systems Regulation. If such a regulation requires that a class I device remain subject to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files, that device would nevertheless qualify for this exception.

These are very simple devices, such as—

- Tuning fork (product code GWX)

- Elastic bandage (product code FQM)
- Examination gown (product code FME)
- Bedpan (product code FOB)
- Manual toothbrush (product code EFW)

We have provided a list of the devices that at present would be eligible for this exception; see Ref 10. FDA is providing this list to illustrate the scope of this exception at the time of this proposed rule.

Proposed § 801.30(a)(3) provides an exception for individual class I, single-use devices, all of a single version or model, that are distributed together in a single package, whose uses are generally known to the persons by whom they are intended to be used, and which are not intended or promoted for individual sale. Those devices would not have to be individually labeled with a UDI. For example, this includes devices that are not individually wrapped (e.g., a box of patient examination gloves) and devices that are individually wrapped and bear identifying information, but which are not intended to be distributed individually (e.g., a box of adhesive bandages). In such cases, applying a UDI on each individual device would not be likely to contribute to better identification of the device and would be an unnecessary burden and cost. The device package containing these individual devices must, however, bear a UDI on its label.

Proposed § 801.30(a)(3) would apply only to class I devices because we believe that only class I devices are currently marketed in the manner contemplated by § 801.30(a)(3). It is not our intent to require changes to current practices regarding the packaging of devices, and we are specifically seeking comment regarding this exception in question 15 of section IX of this document. Labelers of class II devices that would qualify for this exception but for their classification may request an exception or alternative under proposed § 801.35.

Proposed § 801.30(a)(4) provides an exception for a device used solely for research, teaching, or chemical analysis, and not intended for any clinical use, as is consistent with FDA's general approach to the regulation of such articles as set out in 21 CFR 801.125.

Proposed § 801.30(a)(5) provides an exception for a custom device, or a device made to meet the unique needs of a patient or physician, within the meaning of § 812.3(b). This exception is consistent with FD&C section 520(b), which provides that FD&C sections 514, Performance Standards, and 515, Premarket Approval, do not apply to custom devices. Because a custom device is intended only for use by an individual patient and not generally available for sale, a UDI would not be necessary to uniquely identify the device.

Proposed § 801.30(a)(6) provides an exception for an investigational device within the meaning of part 812 (21 CFR part 812). Investigational devices are subject to a variety of requirements under part 812 that ensure adequate identification of the device.

Proposed § 801.30(a)(7) provides an exception for a veterinary medical device not intended for use in the diagnosis of disease or other conditions in man, in the cure, mitigation, treatment, or prevention of disease in man, or intended to affect the structure or any function of the body of man.

Proposed § 801.30(a)(8) provides an exception for a device intended for export from the United States. This is because foreign nations have their own regulatory requirements, which may include identification requirements, with which the device must conform.

Proposed § 801.30(a)(9) provides an exception for a device held by the Strategic National Stockpile and granted an exception or alternative under § 801.128(f)(2). This exception is consistent with other labeling exceptions that apply to devices held by the Strategic National Stockpile. For background on the Strategic National Stockpile, see FDA's Interim Final Rule concerning Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile (72 FR 73601, December 28, 2007).

Proposed § 801.30(a)(10) provides an exception for a device for which FDA has established a standard pursuant to section 514(b) of the FD&C Act and has provided therein an exception from the requirement of proposed § 801.20, or for which FDA has recognized all or part of a standard pursuant to section 514(c) of the FD&C Act and has included an exception from the requirement of proposed § 801.20 within the scope of that recognition. This exception is intended to provide FDA flexibility in the application of the UDI system, or an alternative, when we are using a standard as a special control for a particular device.

Proposed § 801.30(a)(11) provides an exception for a device constituent part of a combination product, *provided that* the device constituent part of a combination product is physically, chemically, or otherwise combined with other constituents of the combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product. If it is possible for the device constituent part to be used in any way except as part of the use of the combination product, this exception does not apply. See discussion under preceding question 3.

Proposed § 801.30(a)(12) provides an exception for a device that is packaged in a convenience kit, provided that the device is intended for a single use. This exception does not apply if the device is intended for more than one use. See discussion under preceding question 4.

Proposed § 801.30(b) provides an exception for shipping containers, because they often contain different, unrelated devices, and sometimes other items as well. We do not propose to require a UDI be placed on any shipping container, but the device packages within the shipping container would be subject to all UDI labeling requirements unless an exception applies under proposed §§ 801.30(a), 801.35 or 801.128(f)(2).

Proposed § 801.30(c) provides an exception that would permit the labeler of a class I device to label it with a UDI that does not include any production identifiers; the UDI would only have to include the device identifier. Most Class I medical devices include a plain text version of relevant production identifiers (e.g., a lot number or an expiration date) somewhere on the device label. However, the cost of encoding production identifiers in dynamic barcodes for high-volume class I device production lines may outweigh the benefits of this enhanced identification. Furthermore, we believe that hospitals may be less likely to track or document individual class I device use in patient records, and are more likely to simply use a more-generic identifier; the device identifier portion of the UDI will adequately serve such needs. Labelers of class I devices are not prohibited from using a production identifier, but they would not be required to do so under this proposed rule.

Proposed § 801.35 authorizes additional, case-by-case, labeling exceptions beyond those provided by proposed § 801.30; this section also authorizes alternatives to standard UDI labeling requirements. This provision is intended to ensure that the UDI system has adequate flexibility to accommodate any special circumstances regarding a particular device or type of device that indicate that application of the standard UDI labeling requirements is not technologically feasible or that the objectives of this rule would be better served by application of an alternative approach. Only a device labeler may request an exception or alternative

under proposed § 801.35, although FDA may, under proposed § 801.35(d), provide an exception or alternative on our own initiative. A request for an exception or alternative under proposed § 801.35 would have to—

- Identify the device that would be subject to the exception or alternative;
- Identify the UDI labeling requirements that are the subject of the request for an exception or alternative;
- If requesting an exception, explain why the UDI labeling requirements are not technologically feasible;
- If requesting an alternative, describe it and explain how it would provide for more accurate, precise, or rapid device identification than the standard requirements or how the alternative would better ensure the safety or effectiveness of the device;
- Provide an estimate of the number of labelers and the number of devices that would be affected if we grant the requested exception or alternative.

See proposed § 801.35(a). We may request additional information needed to clarify the scope or effects of a request; see proposed § 801.35(a)(6).

A request under proposed § 801.35 could be submitted to FDA as part of a premarket submission, proposed § 801.35(b), or through a written request at any time after a premarket submission has been filed, proposed § 801.35(c). If we grant a request for an exception or alternative, we may include conditions to ensure the adequate identification of the device through its distribution and use, given the anticipated circumstances of use. If we grant an exception or alternative, we would provide information about the exception or alternative on our Internet site. If necessary to facilitate or implement an alternative granted under this section, FDA may, at our discretion, act as an issuing agency; see proposed § 830.200(d).

6. May a device that is exempt from UDI labeling requirements nevertheless be labeled with a UDI?

Yes. Proposed § 801.40(a) permits the labeler of a device that is not required to bear a UDI to voluntarily include a UDI on the label of that device. We have included this provision because it may be in the interest of both labelers and their customers to use the same identification system for all devices, and not just those devices that this rule requires to bear a UDI. If the labeler voluntarily includes a UDI on the label of a device, the labeler may also voluntarily provide information concerning the device to the GUDID; see proposed § 830.300(c). We expect most labelers who voluntarily label their devices with UDIs will choose to voluntarily submit information to the GUDID in order to facilitate the identification of those devices.

7. How would a UDI have to appear on a device label and on a device package?

We would require the UDI to be provided on the device label and each device package in an easily-readable, plain-text form. This is so patients, health care professionals, FDA, and other users of the UDI system would be able to read the UDI and enter it, at their discretion, into patient records, reports to FDA, and data systems without any technological assistance. We do not specify a particular font or point size for the UDI; rather, the UDI would be subject to existing requirements that govern medical device labels, including § 801.15, concerning prominence of required label statements.

The UDI would have to be provided on device labels and device packages through AIDC technology; see § 801.45(a)(2). The AIDC version will facilitate efficient and accurate identification of the device, documentation of the use of the device in electronic records, and potentially many other uses, while reducing the possibility of human error. The AIDC technology may be a bar code, RFID, near-field communications (NFC), or any other technology that serves the same objectives. We do not specify what technologies may be used, because the most appropriate technology will vary considerably depending on the type of device and its intended uses, and because the available technologies are likely to evolve and advance over time.

At present, we believe most device labelers would choose to meet the requirement for AIDC technology by providing a bar code. In such instances, the bar code may be formatted in any way that meets the technical requirements of the bar coding system that is employed.

While the presence of a bar code is immediately obvious, the presence of other AIDC technologies, such as RFID and near-field communication, may not be so obvious. If a device user is not aware of the availability of AIDC technology, this may impair the rapid and accurate identification of the device. To ensure that the presence of AIDC technology is obvious, if the AIDC technology is not visible on the label of the device or on the device package, the labeler would also have to include a symbol on the device label or on the device package that provides notice of the presence of AIDC technology; see proposed § 801.45(c). The symbol may be a symbol endorsed in an international or national standard recognized by FDA under section 514(c) of the FD&C Act (for example, symbols specified for differing types of RFID systems), a symbol generally recognized by the persons who typically use the device, or the generic symbol shown in proposed § 801.45(c).

8. When would a device have to be directly marked with a UDI?

We restrict our proposed direct marking requirements, proposed § 801.50, to three categories of devices, because these devices present unique risks that we believe would be better controlled through direct marking:

- An implantable device;
- A device that is intended to be used more than once and that is intended to be sterilized before each use; and
- Stand-alone software that is a ''device'' under § 201(h) of the FD&C Act.

An implantable device, proposed § 801.50(a)(1)—An implantable device is, by definition, intended to be used for at least 30 days (see the proposed definition of implantable device at § 801.3). Once implanted, the device is separated from its label and labeling, which may prevent accurate identification of the device over time, potentially undermining the accuracy of problem reporting and delaying the identification and resolution of problems with the implanted device. But if the UDI is evident upon explantation of the device, or is retrievable through AIDC technology, it will still be possible to unambiguously identify the implant.

A device that is intended to be used more than once and that is intended to be sterilized before each use, proposed § 801.50(a)(2)—These devices may also be used over an extended period of time, with the need for effective cleaning and sterilization before each new use providing a complicating factor. It is particularly important to understand precisely the identity of each such device, because effective sterilization methods may be different for different types of devices. If a device is not effectively sterilized, and is then used on a patient, severe harm may result. UDI labeling, and the associated data available from the GUDID, will help ensure device users have the information they need to avoid such harm.

Stand-alone software, proposed § 801.50(a)(3)—This category excludes software that is an integrated component of a device, such as software embedded in a chip that is part of a circuit in a device. This includes stand-alone software that meets the definition

of ''device'' under § 201(h) of the FD&C Act, e.g., prostate auto-contouring software that assists clinicians in generating estimates of the anatomy boundary contours of the prostate gland in computed tomography scans, magnetic resonance images, and ultrasound scans to aid in patient diagnosis, treatment planning, and post-treatment monitoring. Stand-alone software is unique in that it may be possible to obtain, use, and update it without ever receiving a physical package bearing a physical label. For example, software may be initially obtained via the Internet, and it is very common for patches, updates, and new versions to be provided through the Internet. Furthermore, even when the software is identical to the package and label description, it is typically used only after being installed on a computer (or multiple computers, or on a network) and typically the package and label (and the physical media, such as a CD–ROM or DVD–ROM) are no longer used. Additionally, software may be transferred from one installation to another without any external indication. All of these factors make it highly likely that users of stand-alone software will not have ready access to the package or label, or if they do, that the software differs from the label description. By requiring a simple form of direct marking as part of the software itself, we overcome these problems and ensure that users can readily and precisely identify stand-alone software. In contrast to stand-alone software, software that is a component of a device will be adequately identified by the UDI on that device's label and package.

The form of direct marking that would be required depends on which of these categories the device falls within. See proposed § 801.50(c). If your device is an implantable device, or is intended to be used more than once and to be sterilized before each use, the direct marking would have to be provided through either or both of the following:

- Easily-readable plain-text;
- AIDC technology, or any alternative technology that will allow for identification of the device. Examples include providing the UDI of the device on demand to an external reader or sensor, or making the UDI or a barcode or other representation of the UDI discernible to an x-ray or other imaging system.

If your device is stand-alone software, the direct marking would have to be provided through either or both of the following:

- An easily-readable plain-text statement displayed whenever the software is started;
- An easily-readable plain-text statement displayed in response to a menu command (e.g., an ''About * * *'' command).

We seek comments about the utility of marking stand-alone software in this manner.

The UDI conveyed by the direct marking may be either the UDI that appears on the label of the device, or a different UDI used to distinguish the unpackaged device from the device while it remains in packaged form. See proposed § 801.50(b). We permit the use of a different UDI to distinguish the unpackaged device because that is consistent with both current direct marking practices and the objectives of this rule.

The requirement for direct marking of a device would go into effect two years after the date specified by proposed § 801.20 for the device to bear a UDI on its label; see proposed § 801.50(d). We believe this will provide the labeler adequate time to implement an appropriate direct-marking methodology for any device that would be subject to the requirements of proposed § 801.50. We seek comments on whether this is an appropriate amount of time in which to make this provisions effective.

Although our proposed direct marking requirements apply only to the three categories of devices identified by proposed § 801.50(a), we recognize that even within those categories, direct marking will not always be appropriate or feasible. Proposed § 801.50(e) provides reasonable exceptions to the requirement for direct marking; direct marking would not be required when any of the following apply—

- Direct marking would interfere with the safe and effective use of the device; proposed § 801.50(e)(1). For example, it is possible that direct marking would interfere with the safe and effective use of orthopedic bone screws because direct marking could adversely affect the structural integrity of the screw. Direct marking may also interfere with the safe and effective use of instruments used in arthroscopic surgery because direct marking could create irregular surfaces that could reduce the effectiveness of sterilization procedures and harbor bacteria or other pathogens.
- Direct marking is not technologically feasible; proposed § 801.50(e)(2). To be technologically feasible, it must be possible to place a direct marking on the device using readily-available technology, and it must be possible for that direct marking to be read in the environments it is intended to be used, again using readily-available technology (generally meaning technologies that are typically present in the environment where the device is used).

For example, it is not technologically feasible to directly mark polymethylmethacrylate (PMMA) bone cement, classified at § 888.3027, because bone cement is sold in an amorphous state. Similarly, at the present time it is not technologically feasible to directly mark an aqueous shunt, classified at § 886.3920, because the small size of the device would not permit inclusion of RFID or near-field communication, and any barcode, even if technically possible to apply, would be extraordinarily difficult to read with existing technologies. The technological feasibility of directly marking a device may change over time as new technologies are developed, enabling more direct marking options.

In addition, the ''not technologically feasible'' exception from direct marking under § 801.50(e)(2) can include circumstances, where, for a very small firm, the capital investment in technology to allow direct part marking so exceeds to benefit of applying the requirement that FDA could find direct part marking to be ''not technologically feasible.'' Factors to be considered in this instance would include: The number of devices otherwise subject to direct marking across which the capital investment can be amortized, current net earnings on expected sales of such devices, and the number of years required to recover the capital investment based on net earnings. FDA believes, however, when considering whether economic factors justify an exception under the ''not technologically feasible'' language, FDA should retain discretion to also consider the public health benefits of direct marking for a particular device based on its usage and risks.

- The device is intended to remain implanted continuously for a period of less than 30 days, unless the Commissioner determines otherwise in order to protect human health; proposed § 801.50(e)(3). This exception is inherent in the definition of implantable device, but is provided for clarity.
- The device has been previously directly marked; proposed § 801.50(e)(4) We are proposing this exception both because of the practical difficulty and potential for confusion involved in applying a new direct marking when a direct marking already exists, and because multiple markings may compromise the device. We believe that continued use of the original direct marking will provide an adequate means to identify the device through its distribution and use. A labeler may,

however, remark a previously-marked device if the labeler concludes, on the basis of its own evaluation, that re-marking the device would not adversely affect the safety or effectiveness of the device.

- The device is sold at retail and bears a Universal Product Code (UPC); § 801.50(e)(5).
- The device is software that is not stand-alone software, but is a component of a medical device; § 801.50(e)(6). Examples of a software device that is not stand-alone include software incorporated into devices such as infusion pumps and software integrated and used to control systems such as MRI machines.

If you determine that your device qualifies for an exemption from direct marking, you would have to document the basis of your decision in the design history file as required by § 820.30(j) of the Quality System Regulation, see § 801.50(f). If you determine that your device qualifies for an exemption from direct marking because direct marking would interfere with the safe and effective use of the device, see proposed § 801.50(e)(1), or because you determine the device cannot be marked because it is not technologically feasible, see proposed § 801.50(e)(2), you would have to send a notice to FDA, see proposed § 801.50(g). Your notice to FDA would have to provide the following information:

- Identification of the exception, or exceptions, authorized by proposed § 801.50(e) that you are invoking.
- An explanation of the factors that make the exception applicable to your device.
- The name of, and contact information for, the person who determined that the exception is applicable to your device.

FDA does not intend to routinely respond to notices submitted under proposed § 801.50(g). If we have a question concerning your notice, we may request additional information, review information in your device history records when we conduct an establishment inspection, or take such other action as may be appropriate.

9. After the requirement for UDI labeling goes into effect, May I continue to identify my device with the National Health-Related Item Code (NHRIC) or National Drug Code (NDC) number assigned to it?

No; see proposed § 801.57. FDA is phasing out the use of NHRIC and NDC numbers to identify medical devices, in favor of the UDI system. On the date your device would have to be labeled with a UDI, any NHRIC or NDC assigned to that device will be rescinded, and you will no longer be permitted to label your device with an NHRIC or NDC. Continued use of NHRIC or NDC codes on device labels and device packages would result in confusion concerning the appropriate identification of the device, and might obscure the distinction between drug and device identification systems. We seek comments on whether there are compelling reasons to continue to permit the use of these numbering systems.

10. Formatting of Dates Provided on Medical Device Labels

Proposed § 801.18 would require all dates provided on medical device labels to conform to a specified format: Month Day, Year, with the month shown as a three-letter abbreviation of the month (e.g. SEP 30, 2012). This format—Month Day, Year (SEP 30, 2012)—is the format most commonly used in the United States and is the format most familiar to patients and consumers. Dates may be printed in any size and font that meet the general labeling requirements of part 801.

When dates are formatted to use only numbers, inconsistencies in formatting from one device to another can lead to confusion concerning the proper interpretation of the date. For example, the expiration date January 12, 2013 may, at present, be expressed as 1–12–2013 (this is the format most commonly used in the United States) or as 12–1–2013 (this is the format most commonly used in Europe). This could cause a patient or a health care professional to mistakenly continue to use the device for more than 10 months past the intended expiration date. Another source of potential confusion is the use of date formats that use only the month and year, such as 12–2011, 12–11, or December 2011. The omission of the precise day of the month creates uncertainty; 12–2011 could indicate that use of the device should cease on the first day of December 2011, or the last day of December 2011. Furthermore, when a date uses a two-digit representation of year, it may not be clear that the number sequence represents a date. Use of a standard format consistent with the usage most often used and most readily recognized by consumers in the United States will eliminate any potential confusion concerning the appropriate interpretation of dates provided on medical device labels. (Ref. 8)

The proposed date format may contribute to more accurate identification of a device by making it possible to distinguish between those devices that have passed an expiration or use-by date and those that have not. More accurate identification would make it easier to both avoid the risks of using ''expired'' devices and the costs of premature disposal of devices that have not actually reached an expiration or use-by date.

We provide a limited exception in proposed § 801.18(f) for electronic products to which a standard is applicable under subchapter J, Radiologic Health; 21 CFR 1010.3(a)(2)(ii) specifies the date format for such electronic products. We do not believe it is necessary to change this requirement for these products, because that standard uses the month and year of production, which does not involve the potential for confusion that an expiration date or use-by date may present.

Proposed § 801.18 would go into effect one year after we publish a final rule. We believe § 801.18 should be implemented as rapidly as possible because it is designed to correct existing confusion concerning the interpretation of dates on medical device labels. We seek comments on whether this date format and associated effective date are feasible and appropriate, including whether the effective date should be linked to the UDI implementation date for each class of devices.

C. Requirements Relating to Issuing Agencies and Submission of Data to the Global Unique Device Identification Database (Part 830)

New part 830 would provide FDA's requirements for the composition and issuance of UDIs, explain the process FDA would follow to accredit an ''issuing agency'' to operate a system for the issuance of UDIs, explain when FDA would act as an issuing agency, and would provide requirements pertaining to the GUDID, including when and what data must be submitted to the GUDID and by whom.

1. Definitions

We are proposing, in new § 830.3, definitions for important terms used by FDA's unique device identification system under this rule. The terms proposed for inclusion in § 830.3 are discussed in this section II.C; where a term is also defined in part 801, the definitions are identical.

The following terms would have the same definition in both parts 801 and 830; these terms are discussed earlier in this preamble—

- Automatic identification and data capture (AIDC).
- Device package.
- Expiration date.

- FDA, we, or us.
- Labeler.
- Lot or batch—This definition includes a definition of finished device.
- Specification.
- Shipping container.
- Unique device identifier (UDI).
- Universal product code (UPC).
- Version or model.

The following additional terms are defined in proposed § 830.3—

Issuing agency—This term would mean an organization accredited by FDA to operate a system for the issuance of UDIs. Our proposed rule permits multiple issuing agencies, and under certain circumstances FDA could act as an issuing agency.

Global Unique Device Identification Database or GUDID—This term would mean the FDA-administered database that serves as a repository of information to facilitate the identification of medical devices through their distribution and use. The device identifier portion of a UDI would not be structured to provide specific information concerning a device; rather, the device identifier would serve as a reference number that would allow you to find information about the device by accessing information reporting to the GUDID. For example, you would not be able to parse out a segment that indicates that the device is a cardiovascular device, or that the device is packaged sterile, or that the device is marketed under a particular FDA premarket submission.

Premarket submission—This term would mean any of the following types of applications:

- Premarket approval application—an application for approval of a device submitted under section 515(c) of the FD&C Act.
- Product development protocol—the application described in section 515(f) of the FD&C Act.
- Premarket report means a report submitted under section 515(c)(2) of the FD&C Act.
- Humanitarian device exemption application—an application for approval of a humanitarian use device submitted under section 520(m) of the FD&C Act.
- Biologics license application means an application for approval of a device submitted under section 351 of the Public Health Service Act.
- Premarket notification submission means a report submitted under section 510(k) of the FD&C Act.
- New drug application for a transitional device means a new drug application for a medical device that was regulated by FDA as a new drug prior to May 28, 1976, the date of enactment of the Medical Device Amendments of 1976.

Small business—This term would mean a medical device manufacturer with 500 or fewer employees, or a medical device relabeler or repackager with 100 or fewer employees. This is consistent with how the Small Business Administration defines ''small business'' under the Small Business Act (5 U.S.C. 631). We are proposing this definition only to help explain when FDA would act as an issuing agency under proposed subpart D of part 830.

2. What would be the requirements for the composition and issuance of a valid Unique Device Identifier?

In order to ensure that all UDIs will meet the public health objectives of this rule, and to ensure that device user facilities, health care professionals, FDA, and others will be able to make efficient and effective use of the UDI system, we are proposing every UDI must be issued under a system operated by FDA or an FDA-accredited issuing agency, see proposed §§ 830.20(a), and must conform to the international standards that would be incorporated by reference by proposed § 830.10. UDIs would have to be composed only of characters from a single character set defined by one of these incorporated standards; see proposed § 830.20(b). Conformity to these international standards will ensure that each issuing agency's system of assigning UDIs will be broadly compatible and capable of fulfilling our public health objectives.

Incorporation by reference of ISO/IEC 646:1991, Information technology—ISO 7-bit coded character set for information exchange, would limit the plain-text version of a UDI to a particular set of alpha-numeric characters. Incorporation by reference of ISO/IEC 15459–2:2006, Information Technology—Unique identifiers—Part 2: Registration procedures, would require organizations wishing to become issuing agencies to apply to the Registration Authority and obtain an Issuing Agency Code (IAC). This assures that multiple issuing agencies can create globally unique identifiers and minimizes the risk of duplicative identifiers. Incorporation by reference of ISO/IEC 15459–4:2008, Information technology—Unique identifiers—Part 4: Individual items, would provide the framework for the development of UDIs for serialized devices; and incorporation by reference of ISO/IEC 15459–6:2007, Information technology—Unique identifiers—Part 6: Unique identifier for product groupings, would provide the framework for the development of UDIs for lot or batch controlled devices.

As explained in section I.B of this document, requiring the use of issuing agencies and conformity with international regulatory cooperation activities and internationally recognized identification standards would best serve the public health objectives of this rule by ensuring the uniqueness, consistency, and broad compatibility of device identification, and avoiding the confusion and inefficiency that would result if every labeler generated their own non-standardized identifiers or if FDA alone issued identifiers.

3. Use and Discontinuation of a Device Identifier

Under proposed § 830.40(a), you would be prohibited from using more than one device identifier from any particular accredited system to identify a particular version or model of a device. If you use systems operated by two or more issuing agencies, you would be permitted to identify that device with one identifier from each system that you use. Under proposed § 830.40(b), you would be prohibited from simultaneously using one device identifier to identify more than one version or model of a device.

If you discontinue a particular version or model of a device, you would be prohibited from reassigning the device identifier to another device; see proposed § 830.40(c). If you re-introduce a discontinued device and no changes have been made that would require a new device identifier, you would be permitted to use the same device identifier that you previously used to identify the device; see proposed § 830.40(c). If your issuing agency ceases to be accredited, FDA would permit you to continue to label a device using the device identifier issued under the system operated by the issuing agency until such time as this rule requires you to discontinue use of the UDI; see proposed § 830.40(d).

The approach used by proposed § 830.40 is necessary to ensure that each device identifier identifies only one version or model of a device. Use of a given device identifier to identify more than one version or model, or the use of more than one identifier from a particular issuing agency to identify a given version or model, would inevitably lead to confusion in the identification of devices, and would seriously undermine the public health objectives of this rule.

4. What changes would require a new device identifier?

It is essential for each distinct version or model of a device to be uniquely identified so that it may be rapidly and

accurately distinguished from every other device. You would be permitted to replace one device identifier with another (in other words, discontinue one UDI and begin using another) for a particular version or model of a device for any reason, but you would be *required* to use a new device identifier in the circumstances discussed under this question 4. The changes that would require a new device identifier are set forth in proposed § 830.50, and include—

- You make a change that has the potential to affect the safety or effectiveness of the device; see proposed § 830.50(c). If a change has the potential to affect safety or effectiveness, it will be important for the health care community to be aware of the change in order to distinguish between the updated version or model and the prior version or model.
- You change from a nonsterile package to a sterile package, or from a sterile package to a nonsterile package; see proposed § 830.50(d). Health care practitioners and patients need to be aware of changes relating to sterility, because of the serious consequences that may result if an unsterile device is thought to be sterile and is used without undergoing necessary sterilization. Consequently, it is critically important for each sterile and nonsterile version or model of a device to be easily distinguished and correctly identified.
- You change the quantity of devices in a package, which results in a new device package and a new version or model; see proposed §§ 801.3 and 830.50(b). Thus, a different device identifier would be required for an individually packaged device and for a box of five device packages. In order to adequately identify a device throughout distribution and use and to be consistent with current practice and standards, different types of packages would have different identifiers. That way, anyone using the system can know exactly what they sent and received when and can more easily and effectively identify and respond to problems. For example, they would know what to look for if there is a recall or other problems, and would be able to more narrowly target corrective actions by device package.
- You relabel a device that was previously labeled with a UDI by another labeler; proposed § 830.50(e). Because a relabeled device needs to be distinguishable from the version or model that bears the original label and you are responsible for your own labeling, you would not be permitted to use the UDI assigned by the original labeler. In addition, if you relabel a device, proposed § 830.60 would require you to keep a record showing the relationship of the prior device identifier (the identifier assigned by the prior labeler) to the new device identifier (your identifier).

All of these changes would result in a new version or model, and consequently would require a new device identifier; you would not be permitted to continue to use an existing identifier to identify the new version or model.

5. How would FDA accredit an issuing agency?

An issuing agency would be an FDA-accredited private nonprofit organization or a State agency that operates a system for assignment of UDIs pursuant to this rule. See proposed § 830.100. We selected the term ''issuing agency'' because it is the term used in the international standards incorporated by reference by proposed § 830.10, and is a term familiar to many labelers. We would require the issuing agency to be a State agency or nonprofit organization in order to minimize potential conflicts of interest and to help assure that the fees assessed are reasonable to small businesses. FDA would accredit a private nonprofit organization or a State agency, see proposed § 830.100(a), if it meets all of the following criteria; see proposed § 830.100(b):

- The system uses UDIs that meet the requirements of the proposed rule to adequately identify a device through its distribution and use. See proposed § 830.100(b)(1).
- The system it operates conforms to the international standards incorporated by reference at proposed § 830.10; see proposed § 830.100(b)(2). Conformance to those standards helps ensure that devices will be uniquely and consistently identified and that each system will be broadly compatible with other systems and will achieve the objectives of this rule.
- The issuing agency makes its system available to all users according to a single set of consistent, fair, and reasonable terms and conditions; see § 830.100(b)(3). This means that the issuing agency would be prohibited from discriminating against, or giving preferential treatment to, a user for any reason that is not directly related to the efficient and orderly operation of the system in a manner that complies with this rule.

An organization or State agency that wishes to be accredited as an issuing agency would have to submit an application to FDA and include all the information listed in proposed § 830.110. This includes contact information; evidence of nonprofit status; information on the system that will be used to assign UDIs; fee schedules, if any, with an explanation of any fee waivers or reductions available to small businesses; satisfactory assurances that the applicant would comply with the requirements of this rule; and other information required by FDA to clarify the application for accreditation. This information is necessary to ensure that each FDA-accredited issuing agency will be capable of effectively managing a system for the assignment of unique identifiers in full compliance with the requirements of this rule.

The initial accreditation will be for a period of 3 years, and renewed accreditation will be for a period of 7 years; see proposed § 830.110(f). An issuing agency would have to inform FDA that it wishes to renew its accreditation and would have to submit a complete renewal application at least six months prior to expiration of its accreditation, see proposed § 830.110(b). These time frames would provide FDA adequate time to evaluate the performance of issuing agencies before each application for renewed accreditation.

Within 60 days of receipt of any application for accreditation, FDA will notify the applicant of any deficiencies and we will request correction of those deficiencies within 60 days. The applicant may request an extension if it needs additional time to correct those deficiencies. If the deficiencies are not resolved to FDA's satisfaction within the specified time period, we may deny the application for accreditation; see proposed § 830.110(c)(2). When we have completed our review, we will notify the applicant whether its application for accreditation has been granted or denied. That notification shall list any conditions associated with approval or state the reasons for denial; see proposed § 830.120(c)(3). If we deny an application for accreditation, we will advise the applicant of the circumstances under which an application may be resubmitted; see proposed § 830.120(c)(4). If FDA does not reach a final decision on a renewal application before the expiration of an issuing agency's accreditation, the approval will be deemed extended until FDA reaches a final decision on the application; see proposed 830.120(c)(5).

6. What would be the responsibilities of an FDA-accredited issuing agency?

In order to ensure that all device identifiers are unique and meet the proposed requirements, and that all system users are treated fairly, FDA

would need to maintain effective oversight of issuing agencies. Under proposed § 830.120, an issuing agency would be responsible for—

- Operating a system for assignment of UDIs that meets the requirements of proposed § 830.20 and the standards incorporated by reference at proposed § 830.10.
- Making information available concerning its system for the assignment of UDIs.
- Maintaining a list of labelers that use its system for the assignment of UDIs and providing FDA with a copy of the list each year.
- Upon request, providing FDA with information concerning a labeler that is employing the issuing agency's system.
- Remaining in compliance with the eligibility and accreditation criteria set forth in proposed § 830.100.

7. How would an issuing agency relinquish its accreditation, and how would FDA suspend or revoke an issuing agency's accreditation?

An issuing agency would be permitted to relinquish its accreditation before expiration of its current term of accreditation by submitting a letter stating its intent to FDA at least 9 months before the date it will relinquish its accreditation. See proposed § 830.110(d). If an issuing agency relinquishes its accreditation and duties before expiration of its current term of accreditation, it would have to notify all labelers that are participating in the issuing agency's UDI system, in a manner and time period approved by FDA, of the date that the issuing agency will cease to serve as an issuing agency. See proposed § 830.110(e).

Under proposed § 830.130, FDA may suspend or revoke the accreditation of an issuing agency if we find, after providing the issuing agency with notice and opportunity for an informal hearing, that the issuing agency:

- Has been guilty of misrepresentation in obtaining its accreditation;
- Failed to fulfill the responsibilities of an issuing agency outlined in proposed § 830.120; or
- Has violated or aided and abetted in the violation of any regulation promulgated pursuant to sections 510(e) or 519(f) of the FD&C Act; these provisions authorize regulations prescribing a uniform system for the identification of devices, and require regulations establishing a unique device identification system.

We modeled these criteria on the approach we use under the Mammography Quality Standards Act, which gives FDA authority to suspend or revoke the accreditation of mammography facilities. See 21 CFR 900.14.

8. When would FDA act as an issuing agency?

FDA would act as an issuing agency during any period where there is no accredited issuing agency (for example, if there is no accredited issuing agency by the time UDI labeling requirements go into effect pursuant to proposed § 801.20). See proposed § 830.200(a). In such a circumstance, FDA would have to act as an issuing agency in order for the unique device identification system to function.

FDA would also act as an issuing agency if we determine that a significant number of small businesses would be substantially and adversely affected by the fees required by all accredited issuing agencies. See proposed § 830.200(b). We have included this provision because we are mindful that small device manufacturers may be concerned that they might face significant, recurring fees required by an issuing agency to participate in its system. We anticipate that issuing agencies will be sensitive to the needs of small businesses, so that FDA will not have to invoke this authority and act as an issuing agency.

If FDA acts as an issuing agency, we would not, under current law, assess a fee for our services. Any labeler would be permitted to use FDA as its issuing agency, regardless of whether the labeler is considered a small business. See proposed § 830.210. If it becomes necessary for FDA to act as an issuing agency, we would expect to issue guidance explaining how FDA's issuing agency would function.

We may end our services as an issuing agency if we determine that the conditions that prompted us to act no longer exist and that ending our services would not be likely to lead to a return of the conditions that prompted us to act. See proposed § 830.220(a). When we end our services as an issuing agency, we would allow a labeler to continue to use a device identifier assigned under FDA's unique device identification system until such time as proposed § 830.50 requires the use of a new device identifier. See proposed § 830.220(b).

9. What devices would be subject to GUDID data submission requirements?

Under proposed § 830.300(a), any device that would have to be labeled with a UDI under proposed § 801.20 would be subject to GUDID data submission requirements. This would not include a device, other than a prescription device, sold at retail and such devices when delivered directly to a hospital or other health care facility. The UDI itself would not provide any information concerning the device; it would serve as a key to locate information in the GUDID. The labeler would not be required to submit information concerning any device whose label is not required to bear a UDI because the device is subject to a labeling exception under proposed § 801.30, proposed § 801.35, or proposed § 801.128(f)(2), even when the labeler voluntarily includes a UDI on the label of such a device; see proposed § 830.300(b). When a labeler voluntarily includes a UDI on the label of a device pursuant to proposed § 801.40, the labeler would be permitted, but not required to, submit information concerning that device to the GUDID; see proposed § 830.300(c).

10. Would FDA ever reject data submitted to the GUDID or remove data from the GUDID?

FDA would reject or remove information submitted to the GUDID for any of the reasons outlined in proposed § 830.300(d). These exclusions would prevent misuse of the GUDID for purposes other than those that underlie this rule and would help ensure the accuracy and reliability of information in the GUDID.

We do not intend to remove historical data from the GUDID. Once data has been submitted to the GUDID, unless we act to reject or remove that data pursuant to proposed § 830.300(d), we would retain that data and make it available to the public without regard to whether a device remains in interstate commerce and without regard to any expiration date of a device.

11. What device identification data would I have to submit to the GUDID?

Each labeler would be required to provide minimal information about itself, allowing FDA to communicate with the labeler; see proposed § 830.310(a). For each version or model, the labeler (specifically, the contact for device information) would be required to submit the following information; see proposed § 830.310(b)—

(1) The device identifier portion of the UDI associated with the version or model.

(2) When reporting a substitution of a new device identifier that will be used in lieu of a previously-reported identifier, the device identifier that was previously assigned to the device. This would allow us to link all UDIs pertaining to a given device. The requirement will also make it easier to

report such changes, because by referencing existing data, only the new identifier will need to be reported, rather than the full data set required for a new device.

(3) If proposed § 801.50 requires the device to bear a UDI as a permanent marking on the device itself, either—

• A statement that the device identifier that appears as a permanent marking on the device is identical to that reported under proposed § 830.310(b)(3)(i), or

• The device identifier portion of the UDI that appears as a permanent marking on the device. We would permit a device marked pursuant to proposed § 801.50 to use a different device identifier than that reported under proposed § 830.310(b)(3)(i) because this approach is already in common use (Ref 7) and the link provided by this reporting requirement will ensure adequate identification of the device.

(4) The proprietary, trade, or brand name of the device as it appears on the label of the device. This, and the following requirement, are very basic, pervasive forms of identification used for practically all devices, and are essential to the adequate identification of the device.

(5) Any version or model number or similar reference that appears on the label of the device.

(6) If the device is labeled as sterile, a statement to that effect. This information is essential to the adequate identification of the device, because similar devices may be marketed in a sterile form that is essentially ready for immediate use, and in a nonsterile form that requires the user to sterilize the device prior to use. If a nonsterile device is used on a patient in a situation where sterility is required, serious injury can occur.

(7) If the device is labeled as containing natural rubber latex that contacts humans, or is labeled as having packaging containing natural rubber latex that contacts humans, a statement to that effect. This information is essential to the adequate identification of the device, because in many instances a device that contains latex is visually indistinguishable from a similar device that is free of latex. If there is any confusion concerning the presence of latex, there is a risk that a device may be inappropriately used on patients or by users who are sensitive to latex proteins and at risk of severe anaphylactic reaction when exposed to latex proteins.

(8) If the device is available in more than one size, the size of the particular version or model, together with the unit of measure, as it appears on the label of the device. Confusion concerning the size of a device may result in inappropriate selection and use of a device.

(9) The type of production identifiers that appear on the label of the device. We would not require the reporting of the actual production identifiers to the GUDID. Such an approach would be extraordinarily difficult to administer and would impose significant costs and burdens on labelers. Instead, we would require the labeler to indicate which of the four types of production identifiers the labeler uses to help identify particular devices within a given version or model. By knowing, for example, that a device has an expiration date, a user of that device will be aware that a precise identification of the device will most probably refer to the expiration date. This may be quite important at times, such as when a recall is underway that extends to a certain *lot or batch,* a certain range of serial numbers, or a certain range of expiration or manufacture dates.

(10) The FDA premarket submission number of an approved or cleared device, or a statement that FDA has by regulation exempted the device from premarket notification. This information is essential to linking data in the GUDID with other existing FDA data sources. This would allow FDA to link the UDI to additional information relevant to the identification of the device, while minimizing the reporting burdens imposed on the labeler.

(11) The FDA listing number assigned to the device. This information is also essential to linking data in the GUDID with other existing FDA data sources.

(12) The GMDN code for the device. GMDN is a comprehensive system of generic descriptors (preferred terms) with definitions used to generically identify medical devices. The main purpose of the GMDN is to provide regulatory authorities and other users with a single naming system that will support patient safety by facilitating data exchange between regulatory authorities, including the exchange of post-market surveillance information. We believe that the use of GMDN in the UDI Database would facilitate the organization of the database and allow users to quickly and efficiently search the database. At this time GMDN data is not available to the public unless a fee is paid to the GMDN Agency. We believe, however, that by the time we publish a final rule, GMDN data will be available to the public at no cost. We will not include this requirement in our final rule if GMDN data is not freely available by the time we publish a final rule.

(13) The number of individual devices contained in each device package. This would allow the GUDID to distinguish among different device packages.

Proposed § 830.310(b) would require information for each version or model of a device, which would include different device packages containing identical devices. To avoid submission of duplicative information, FDA plans to structure the data submission process so that labelers would only need to provide each piece of information once. For example, if a device is sold in a box of three and a box of five, you would need to provide all of the applicable information that would be required by proposed § 830.310(b) for any *one* of these device packages. For the other device package (and for any additional device packages added later), you would need to submit only the device identifier portion of the UDI, § 830.310(b)(1), and the number of individual devices in the additional or new device package, § 830.310(b)(13).

12. How would I have to submit device identification data to the GUDID?

Each labeler would have to designate an individual to serve as a point of contact with FDA on matters relating to the identification of medical devices marketed by the labeler. This contact could be an existing contact, such as the official correspondent of a registered establishment, or any other person. The contact would be responsible for ensuring FDA is provided with all information required by this regulation, but would be permitted to authorize an FDA-accredited issuing agency or some other person to provide information to FDA. See proposed § 830.320(a).

The proposed rule would require electronic submission except where it is not technologically feasible for a labeler to submit information electronically. See proposed § 830.320(b). We expect this will be extraordinarily rare. FDA's current thinking is that we would provide two ways to submit data electronically to the GUDID, and we would describe these methods in a future draft guidance document. We believe this approach will meet the needs of both large and small labelers, will minimize the costs of submitting, receiving, and processing GUDID data, and will ensure a high level of accuracy in the data submitted. We welcome comments on these approaches at this time, and will also solicit comments in any future draft guidance on this issue.

The two submission methods we are considering are—

• Data could be submitted as part of a structured product label (SPL) conforming to an ANSI/Health Level Seven (HL7) format (Ref. 7) that meets specifications set by FDA. We believe this is the approach most larger labelers would prefer, as it is based on an existing international standard that can readily accommodate the efficient submission of multiple records. HL7 SPL is already used for submission of data to FDA, so many labelers are already familiar this approach and would face only minimal difficulty in adapting it for submission of UDI data.

• Each data element could be entered directly into the GUDID through a secure Internet site designed for simple, low-volume data entry with on-line help, similar to the approach currently used for electronic registration and listing. We believe this approach may be preferred by some small labelers that would need to provide data for only a few devices.

We would allow each labeler to use either, or both, of these methods. We intend to provide the GUDID system with a means of detecting erroneous or non-compliant data entry; for example, if you try to submit a device identifier that does not conform with the international standards incorporated by reference at proposed § 830.10, we would reject that submission.

13. When would I have to submit device identification data to the GUDID?

You would first have to submit data concerning a version or model of a device to the GUDID no later than the date the label of the device must bear a UDI; see proposed § 830.330(a). Proposed § 801.20 phases in our UDI labeling requirements over several years, and consequently proposed § 830.330(a) would phase in the rule's data submission requirements following the same schedule. See table 7 of this document, Effective Dates of UDI Regulatory Requirements for an overview of how we would phase in these requirements. A labeler who wishes to submit information concerning a device prior to the effective date under proposed §§ 801.20 and 830.330(a) may submit a request to FDA to do so. FDA will accommodate such requests when consistent with our ability to process the additional information in an orderly manner.

Once your device becomes subject to UDI labeling and GUDID data reporting requirements, you would be required to update the information you reported to the GUDID whenever the information changes. The update would have to be submitted no later than the date a device is first labeled with the changed information. If the information does not appear on the label of a device (e.g., the Global Medical Device Nomenclature generic descriptor or the FDA device listing number), the update would have to be submitted within 10 days of the change. See proposed § 830.330(b).

14. Would I be permitted to submit information to the GUDID that is not required by FDA?

Under our proposal, you would not be permitted to submit any information to the GUDID other than that required by proposed § 830.310, except where FDA acts to permit the submission of specified additional information, termed ancillary information; see proposed § 830.340(a). We will provide information concerning the ancillary information that we will accept through the GUDID Web site; see § 830.340(b). You would be permitted, but would not be required, to submit any or all of the ancillary information identified by FDA. We may periodically change the ancillary information that may be submitted to the GUDID; we would announce any change at least 60 days before the change takes effect; see proposed § 830.340(c).

15. What records would a labeler be required to maintain concerning its UDIs?

Each labeler would be required to retain records linking all UDIs to the associated version or model; see proposed § 830.350. The records would have to be retained until three years after the date the labeler ceases to market the version or model. This will ensure that the information is readily available to the labeler and to FDA, for example, if needed to conduct a recall or take other corrective actions regarding one version or model or more of a device. Compliance with this section would not relieve the labeler of the need to comply with recordkeeping requirements of any other FDA regulation.

16. Who would have access to the information I submit to the GUDID?

We have determined that free, easy, and unlimited access to information in the GUDID is essential to the adequate identification of devices through their distribution and use, that health care professionals, patients, and the general public all have substantial needs for access to such information, and that the public health objectives of this rule would be significantly harmed if we attempted to impose any restrictions on access. Consequently, FDA intends to post all information in the GUDID (with one exception, discussed at the end of this paragraph) on our Web site so that it will be readily available to the public, and we intend to include features in the UDI Web site to facilitate inquiries concerning a specific device and searches for general or specific information. This includes information that you would be required to submit pursuant to proposed § 830.310 and ancillary information that you would be permitted to submit pursuant to § 830.340. We have determined that none of the information that would be required to be submitted under this rule would constitute trade secret, confidential commercial information, or personal privacy information, or would otherwise be prohibited from public release. We would not add any categories of ancillary information that might include information that is prohibited from public disclosure. The one type of information we would not post is listing numbers because they serve important governmental functions (e.g., admissibility determinations for shipments of foreign-origin FDA-regulated products seeking to enter domestic commerce) that would be harmed if they were made public.

D. Conforming Amendments

We are proposing several conforming amendments to explain how we will integrate the use of UDIs and device identifiers, and data from the UDI system's GUDID, into FDA's existing regulatory systems and processes. These amendments are identified and briefly discussed in this section II.D.

Part 16, Regulatory Hearing Before the Food and Drug Administration

We propose to amend part 16 (21 CFR part 16) to state that an informal regulatory hearing is available when FDA acts under § 830.130 to suspend or revoke the accreditation of an issuing agency.

Part 803, Medical Device Reporting

We propose to amend §§ 803.32, 803.42, and 803.52 to require UDIs to be included in individual adverse event reports submitted by device user facilities, importers, and manufacturers. We also propose to amend § 803.33 to require a UDI, when available, to be provided with each adverse event reported in a user facility's annual report to FDA.

Part 806, Medical Devices; Reports of Corrections and Removals

We propose to amend §§ 806.10 and 806.20 to permit and encourage use of UDIs to identify devices that are the subject of reports of corrections and removals, and in records of corrections

and removals that are not required to be reported to FDA.

Part 810, Medical Device Recall Authority

We propose to amend § 810.10(b)(2) to indicate that FDA will include UDIs, when known, in the ''pertinent descriptive information'' we provide in a cease distribution and notification order issued under FDA's recall authority.

Part 814, Premarket Approval of Medical Devices

We propose to amend § 814.84(b) to require each periodic report for a class III device to include information on all device identifiers in effect at the time of the report, together with information on all device identifiers discontinued since the previous periodic report. This would not require any periodic report to include information concerning device identifiers discontinued prior to the effective date of a final rule. We are proposing this change to help ensure that UDIs and UDI data for class III devices are reported to the GUDID. This data will help device reviewers process PMA supplements and related PMAs more rapidly by making it easier to integrate relevant data into their reviews.

Part 820, Quality System Regulation

We propose to amend § 820.120(b), concerning the inspection of labels prior to release for storage or use, to include examination of the accuracy of the UDI within the scope of the labeling inspection.

We propose to amend § 820.184(f) to clarify that the device history record is to include any UDI or UPC that is used to identify the device. We regard this amendment as a clarification, as § 820.184(f) already requires the device history record to include ''[a]ny device identification(s) and control number(s) used,'' and both a UDI and a UPC are within the scope of that requirement.

We propose to amend § 820.198(e)(3) to clarify that complaint records are to include any UDI or UPC that is used to identify the device. We regard this amendment as a clarification, as § 820.198(e)(3) already requires the complaint record to include ''[a]ny device identification(s) and control number(s) used,'' and both a UDI and a UPC are within the scope of that requirement.

We propose to amend § 820.200(d)(2) to clarify that a service report is to include any UDI or UPC that is used to identify the device. We regard this amendment as a clarification, as § 820.198(d)(2) already requires the service report to include ''[a]ny device identification(s) and control number(s) used,'' and both a UDI and a UPC are within the scope of that requirement.

Part 821, Medical Device Tracking Requirements

We propose to amend § 821.25(a)(2)(i) and (a)(3)(i) to authorize a manufacturer, when adopting a tracking methodology, to use a UDI of each tracked device when the UDI is necessary to provide for effective tracking of the devices.

We propose to amend § 821.30(a)(2) and (b)(2) to require a distributor or final distributor, respectively, upon purchasing or otherwise acquiring any interest in a tracked device, to include the UDI among other information to be provided to the manufacturer of the device.

We propose to amend § 821.30(c)(1) to require a multiple distributor to include the UDI of a device among the other information required in a written record each time the device is distributed for use by a patient.

Part 822, Postmarket Surveillance

We propose to amend § 822.9(a)(4) to require device identifiers be included among the information required in a postmarket surveillance plan submitted to FDA.

III. Legal Authority for the Proposed Rule

Section 226 of FDAAA, Public Law 110–85 (2007), amended the FD&C Act by adding a new section 519(f) (21 U.S.C. 360i(f)). This section provides for FDA to issue regulations establishing a unique device identification system for medical devices. In addition, section 510(e) of the FD&C Act (21 U.S.C. 360(e)) authorizes FDA to issue regulations to ''prescribe a uniform system for identification of devices'' and to require persons to ''list such devices in accordance with such system.'' Therefore, FDA is issuing the provisions of this proposed rule that would establish a unique device identification system under sections 510(e), 519(f), and 701(a) (21 U.S.C. 371) of the FD&C Act (which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act).

Devices for which there has been a failure or refusal to furnish any material or information required by or under section 519 respecting the device are misbranded under section 502(t)(2) of the FD&C Act, 21 U.S.C. 352(t)(2). The failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act is a prohibited act under section 301(q)(1)(B) of the FD&C Act (21 U.S.C. 331(q)(1)(B)).

Section 701(a) of the act (21 U.S.C 371(a)) gives FDA the authority to promulgate regulations for the efficient enforcement of the act in order to ''effectuate a congressional objective expressed elsewhere in the Act'' (*Association of American Physicians and Surgeons, Inc.* v. *FDA,* 226 F. Supp. 2d 204 (D.D.C. 2002) (*citing Pharm. Mfrs. Ass'n.* v. *FDA,* 484 F. Supp. 1179, 1183 (D. Del. 1980)). By requiring a UDI to appear on the label of devices, and by establishing the GUDID, the proposed rule is designed to improve the accuracy and precision of adverse event reporting, as required by section 519(a) and (b) of the FD&C Act, which will enable FDA to more quickly and precisely identify device problems, such as safety and/or effectiveness concerns. Once a problem is identified, whether through improved reporting or otherwise, the presence of the UDI on the device label, packaging, and in the GUDID will enable FDA to more efficiently and effectively respond, and protect the public health by addressing the problem using one or more of the regulatory tools that Congress has provided for this purpose, such as notification or mandatory recall under section 518 of the FD&C Act (21 U.S.C. 360h), tracking under section 519(e) of the FD&C Act, ensuring the adequacy of a voluntary recall with the assistance of reports of corrections and removals as required by section 519(g) of the FD&C Act, or seizing a device that is adulterated under section 501 of the FD&C Act (21 U.S.C. 351) and/or misbranded under section 502 of the FD&C Act (21 U.S.C. 352).

Section 510(j) of the FD&C Act (21 U.S.C. 360(j)) requires listing information to be accompanied by, at minimum, the label, package insert, and a representative sampling of any other labeling for the device; see section 510(j)(1)(B)(ii). For certain categories of devices, all labeling must be submitted; see section 510(j)(1)(A) and (j)(1)(B)(i) of the FD&C Act. We expect most of the information that would be required to be submitted to the GUDID, see proposed § 830.310, is information that appears on the device label or in the package insert, and is included in the information that is required to be submitted to FDA by section 510(j) of the FD&C Act.

The provisions of the proposed rule that would require UDIs to be included in various records and reports, allow the use of UDIs to identify devices subject to reports of corrections and removals and records of corrections of removals that are not required to be reported to

FDA, and require reporting of UDIs in periodic reports for class III devices, are issued under the authority of sections 519 and 701(a) of the FD&C Act.

The provisions of the proposed rule that would amend the QSR by requiring examination of the accuracy of the UDI as part of the scope of the labeling inspection, that the device history record include any UDI or UPC, that complaint records include any UDI or UPC, and that the service report include any UDI or UPC, are issued under sections 520(f) and 701(a) of the FD&C Act.

The provisions of the proposed rule that would require the inclusion of UDIs on reports regarding tracked devices is authorized by sections 519(e) and 701(a) of the FD&C Act.

Finally, the provision of the proposed rule that would require that postmarket surveillance plans submitted to FDA include the device identifier of the devices involved is issued under sections 522 (21 U.S.C. 360l), and 701(a) of the FD&C Act.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we are uncertain whether the proposed rule would have a significant economic impact on a substantial number of small entities, this and other sections of the preamble and the full RIA (Ref. 10) constitute the Agency's regulatory flexibility analysis.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. The estimated costs of this proposed rule would result in a 1-year expenditure that exceeds this amount.

This proposed rule would require the label and package of medical devices to bear a unique device identifier and would provide for alternative placement or an exception for a particular device or type of device. In addition, this proposed rule would require certain devices to be directly marked with a UDI, with exceptions. Medical device records throughout the required recordkeeping and reporting systems would need to be modified to include the UDI. Under this proposed rule FDA would establish the GUDID, a public database containing information about devices labeled with a UDI. The proposed rule would require labelers of medical devices to submit information concerning each device to the GUDID. In addition, the proposed rule would also establish the accreditation requirements for agencies that may operate a system for the issuance of UDIs and establish the conditions for when FDA might act as an issuing agency.

A. Summary of Costs

The detailed data for this cost analysis were developed by ERG under contract to FDA and are presented in the full report ''Unique Device Identification (UDI) for Medical Devices,'' 2011 (cited in Ref. 10).

Table 3 of this document presents for each affected sector a summary of the estimated present value and the annualized domestic costs of this proposed rule over 10 years using discount rates of 7 percent and 3 percent. Over 10 years, the present value of the domestic costs would be $514.0 million using a 7 percent discount rate and $588.6 million using a 3 percent rate, and the annualized costs would be $68.4 million using a 7 percent discount rate and $66.9 million using a 3 percent discount rate.

TABLE 3—SUMMARY OF THE ESTIMATED REGULATORY COSTS OF THE PROPOSED RULE

[2010 dollars] [1]

Affected sectors	Total present value of cost over 10 years ($ million)		Total annualized costs over 10 years ($ million)	
	3 Percent	7 Percent	3 Percent	7 Percent
Domestic Labelers	$571.5	$499.4	$65.0	$66.5.
Issuing Agencies	$1.0	$0.9	$0.1	$0.1.
FDA	$16.1	$13.7	$1.8	$1.8.
Imports	Not quantified	Not quantified	Not quantified	Not quantified.
Total Domestic Cost of the Proposed Rule	$588.6	$514.0	$66.9	$68.4.

[1] Present value and annualized costs calculated at the beginning of the period.

1. Costs to Domestic Labelers

The majority of the costs of this proposed rule would be incurred by labelers of medical devices. Labelers include manufacturers, reprocessors, specification developers, repackagers and relabelers that cause a label to be applied to a medical device. The estimated present value of the costs for domestic labelers over 10 years would be $499.4 million at a 7 percent discount rate and $571.5 million at 3 percent. Over 10 years, the annualized costs for domestic labelers would be $66.5 million at a 7 percent discount rate and $65.0 million at 3 percent. The largest components of one-time costs would include the costs to integrate the UDI into existing information systems, to install, test and validate barcode printing software and to train employees, and to purchase and install equipment needed to print and verify the UDI on labels. In addition, other significant components of one-time costs include costs to redesign labels of devices to incorporate the date format

within 1 year and to allow space for the UDI barcode, and the direct marking of certain devices.

The largest annual cost components include labor, operating, and maintenance associated with equipment for printing operations, and labor related to software maintenance and training needed to maintain the UDI information system.

2. Costs to Issuing Agencies

The estimated present value of costs over 10 years for two existing organizations, currently performing functions similar to those of an issuing agency under the proposed rule, to apply for FDA accreditation and comply with the proposed reporting requirements would be $0.9 million at a 7 percent discount rate and $1.0 million at 3 percent. The annualized costs over 10 years would be $0.1 million at both 7 percent and 3 percent discount rates. In addition to these two organizations, there may be other nonprofit organizations or State agencies that might apply to FDA to become an issuing agency. In such cases, the estimated application preparation, legal, and reporting costs would apply to other organizations.

3. Costs to FDA to Establish and Maintain the GUDID

The estimated present value over 10 years of the costs to FDA to establish and maintain the GUDID would be $13.7 million at a 7 percent discount rate and $16.1 million at 3 percent. The annualized costs over 10 years would be $1.8 million at 7 percent and 3 percent.

4. Costs to Foreign Labelers

We lack sufficient information to quantify the potential impact of the proposed rule on foreign establishments and thus exclude these establishments from our cost estimate. However, we include a qualitative discussion of the potential impact of this rule on trade and the cost of imported products, whose value is about one-fourth the value of domestic production. We request comment from affected industries about their expected compliance costs and responses to the proposed rule.

5. Uncertainty

In this analysis, the lower and upper bounds of uncertainty surrounding the central estimate of the costs to domestic labelers are about 50 percent lower and 50 percent higher, respectively. Applying a similar range of uncertainty to the total costs of the proposed rule to domestic labelers, issuing agencies, and the FDA, over 10 years the total annualized domestic costs would range from $34.9 million to $101.8 million at 7 percent and $34.1 million to $99.7 million at 3 percent.

6. Alternatives

The Agency analyzed a number of alternatives with varied requirements affecting the coverage of devices, the content of the information required to be encoded in a UDI, and specific provisions of the proposed rule. With respect to device coverage, we analyzed applying the UDI requirements to class III devices only, and to class II and III devices only. The Agency also analyzed costs for requiring the UDI to contain only the device identifier across all device classes. Also included was an alternative that required a UDI labeling change without requiring the submission of data to the GUDID.

Over 10 years at 7 percent, the annualized present value of the highest cost alternative is about $95 million. This alternative would apply the UDI requirements to class I, II and III devices, as well as unclassified devices, unless excepted by proposed 801.30(a)(3)–(12). The lowest cost alternative would apply the UDI requirements to class III devices only. The annualized present value of this alternative is about $11 million.

B. Summary of Regulatory Flexibility Analysis

FDA conducted a regulatory flexibility analysis of the impact of the proposed rule on small entities. Ninety-six percent of the 4,693 affected labeler firms (i.e., 4,483 firms) are small according to Small Business Administration (SBA) size standards. Costs of compliance for domestic labelers as a percentage of revenues exceed 1 percent for about 32 firms with fewer than 19 employees that label devices subject to the direct marking requirements. Moreover, for an estimated 8 firms with fewer than 5 employees, the burden of the proposed rule would represent about 8 percent of their average revenues. If direct marking of devices were not required, no firms would experience costs exceeding 1 percent of revenues.

C. Summary of Benefits

The proposed rule would standardize how medical devices are identified and would contribute to future potential public health benefits from initiatives associated with the increased use of automated systems in healthcare. Most of these benefits, however, require complementary developments and innovations in the private and public sectors, and investments by the healthcare industry that are beyond the scope of this rule. Because such actions are uncertain, we restrict our discussion of the potential public health benefits to those most likely to occur as results of probable responses to the proposed rule in the private and public sectors.

The public health benefits from the UDI would be related to reductions in medical device-related patient injuries and deaths. More accurate and prompt identification of problems would enable more rapid action to reduce the incidence of the adverse events. Public health safety alerts, for example, could be more accurate and timely. Recall actions could more effectively target the problem device. The increased accuracy of adverse medical device reporting and improved recalls should reduce the total number of adverse medical device events, although we are unable to quantify that reduction.

FDA presents the required ROCIS accounting information in table 4 of this document.

BILLING CODE 4160–01–P

Table 4.--Economic Data: Costs and Benefits Accounting Statement (2010 dollars)

				Units			
Category	Primary Estimate	Low Estimate	High Estimate	Year Dollars	Discount Rate	Period Covered	Notes
Benefits							
Annualized Monetized $millions/year					7%		
					3%		
Annualized Quantified					7%		
					3%		
Qualitative	More accurate and prompt identification of device related adverse events would lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls.						
Costs							
Annualized Monetized $millions/year	$68.4	$34.9	$101.8	2011	7%	10 years	Costs to foreign labelers are not included.
	$66.9	$34.1	$99.7	2011	3%	10 years	
Annualized Quantified					7%		
					3%		
Qualitative							
Transfers							
Federal Annualized Monetized $millions/year					7%		
					3%		
From/ To	From:			To:			
Other Annualized Monetized $millions/year					7%		
					3%		
From/To	From:			To:			
Effects							
State, Local or Tribal Government: No effect							
Small Business: The proposed rule may have a significant economic impact on a substantial number of small entities that label medical devices.							
Wages: No effect							
Growth: No effect							

BILLING CODE 4160–01–C

The full discussion of the economic impacts (Ref. 10) is available in docket FDA–2011–N–0090 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

V. Information Collection Requirements

This proposed rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). A description of these provisions is given below with an estimate of the reporting, recordkeeping, and third party disclosure burden. It should be noted that the burden assumptions for some of these requirements reflect one possible manner of compliance, and have only been identified for the purposes of estimating the PRA burden.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Description of Respondents: The recordkeeping, reporting, and third-party disclosure requirements referenced below are imposed on any person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label. In most instances, the labeler would be the device manufacturer, but the labeler may be a specification developer, a single-use device reprocessor, a convenience kit assembler, a repackager, or a relabeler. Respondents may also include any private nonprofit organization or State agency that applies for accreditation by FDA as an issuing agency.

Requirements Reflected in the Burden Estimates: FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the tables that follow:

(1) Proposed § 801.18 Format of dates provided on a medical device label.

(2) Proposed § 801.20 Label to bear a unique device identifier.

(3) Proposed § 801.35 Request for an exception from or alternative to the requirement for the label of a device to bear a unique device identifier.

(4) Proposed § 801.40 Voluntary labeling of a device with a unique device identifier.

(5) Proposed § 801.50 Devices that must be directly marked with a unique device identifier.

(6) Proposed § 830.60 Relabeling or modification of the label of a device that bears a UDI.

(7) Proposed § 830.110 Application for and renewal of accreditation as an issuing agency.

(8) Proposed § 830.120 Responsibilities of an issuing agency.

(9) Proposed § 830.310 Information required for unique device identification.

(10) Proposed § 830.320 Submission of unique device identification information (Waivers).

(11) Proposed § 830.350 Records to be maintained by the labeler.

(12) Proposed conforming amendments to Part 803—Medical Device Reporting

(13) Proposed conforming amendments to Part 806—Reports of Corrections and Removals.

(14) Proposed conforming amendments to Part 814—Premarket Approval of Medical Devices

(15) Proposed conforming amendments to Part 820—Quality System Regulation

(16) Proposed conforming amendments to Part 821—Medical Device Tracking Requirements

(17) Proposed conforming amendments to Part 822 —Postmarket Surveillance

TABLE 5—1ST YEAR ESTIMATED BURDENS [1]

	Number of respondents [2]	Number of responses per respondent [3]	Total annual responses [4]	Average burden per response (in hours) [5]	Total hours [6]
Reporting	372	102	37,938	0.070 [4 minutes]	2,662
Recordkeeping	366	371	135,652	0.081 [5 minutes]	11,055
Third-Party Disclosure (UDI)	359	5,304	1,905,303	0.012 [1 minute]	23,790
Third-Party Disclosure (Date Format)	6,199	102	632,298	1.000 [60 minutes]	632,298

[1] Table 5 shows the burden to labelers affected in the first year.
[2] Maximum No. of Respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[3] Maximum No. of Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.
[4] Maximum Total Annual Responses for any regulatory requirement within each category. IndivIdual regulatory requirements within the category may involve fewer total annual responses.
[5] Rounded to three decimals. Total Hours reflects a more precise, non-rounded Average Burden per Response. An approximate (non-rounded) conversion to minutes is shown in square brackets.
[6] Total Hours is based on a more precise Burden per Response than the rounded value shown in these tables.

TABLE 6—ONGOING ESTIMATED ANNUAL BURDENS

	Number of respondents [1]	Number of responses per respondent [2]	Total annual responses [3]	Average burden per response (in hours) [4]	Total hours [5]
Reporting	6,199	51	316,149	0.023 [1 minute]	7,289
Recordkeeping	5,987	51	305,337	0.989 [59 minutes]	302,121
Third-Party Disclosure	5,987	51	305,337	0.885 [53 minutes]	270,143

[1] Maximum No. of Respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[2] Maximum No. of Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.
[3] Maximum Total Annual Responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.

[4] Rounded to three decimals. Total Hours reflects a more precise, non-rounded Average Burden per Response. An approximate (non-rounded) conversion to minutes is shown in square brackets.
[5] Total Hours is based on a more precise Burden per Response than the rounded value shown in these tables.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). A copy of the supporting statement for this information collection will be available on the Internet at *http://www.reginfo.gov/public/do/PRAMain* and will be posted to the docket at *http://www.regulations.gov,* in docket FDA–2011–N–0090 (Ref. 11). Please email comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FDA, *oira_submission@omb.eop.gov.* Please send a copy of your comments to FDA, using one of the methods described under **ADDRESSES** at the beginning of this document. Interested persons are requested to email comments regarding information collection by September 10, 2012.

VI. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Proposed Effective Dates

FDA proposes that any final rule based on this proposal become effective as summarized in the following table of this document.

TABLE 7—EFFECTIVE DATES OF UDI REGULATORY REQUIREMENTS

Effective date	Requirement
Immediately upon publication of a final rule.	Requests for an exception or alternative to UDI labeling requirements may be submitted pursuant to § 801.35.
	§§ 830.100–830.130 (subpart C of part 830, concerning accreditation of issuing agencies) and § 830.10 (incorporation by reference of certain standards) go into effect. This will allow applications for accreditation as an issuing agency to be submitted to FDA immediately.
One year after publication of a final rule	Dates on medical device labels must be formatted as required by § 801.18.
	The label and package of class III medical devices and devices licensed under the Public Health Service Act must bear a UDI. § 801.20(b)(1).
	Data for class III devices and devices licensed under the Public Health Service Act that are required to be labeled with a UDI must be submitted to the GUDID database. § 830.300.
Three years after publication of a final rule.	Class III devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is 1) an implantable device, 2) a device intended to be used more than once and intended to be sterilized before each use, or 3) stand-alone software regulated as a medical device. § 801.50.
	The label and package of class II medical devices must bear a UDI. § 801.20(b)(2).
	Data for class II devices that are required to be labeled with a UDI, must be submitted to the GUDID database. § 830.320.
Five years after publication of a final rule	Class II devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is 1) an implantable device, 2) a device intended to be used more than once and intended to be sterilized before each use, or 3) stand-alone software regulated as a medical device. § 801.50.
	The label and package of class I medical devices and devices that have not been classified into class I, class II, or class III must bear a UDI. § 801.20(b)(3), (4).
	Data for class I devices and devices that have not been classified into class I, class II, or class III that are required to be labeled with a UDI must be submitted to the GUDID database. § 830.320.
Seven years after publication of a final rule.	Class I devices and devices that have not been classified into class I, class II, or class III required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is 1) an implantable device, 2) a device intended to be used more than once and intended to be sterilized before each use, or 3) stand-alone software regulated as a medical device. § 801.50.
90 days after publication of a final rule ...	All other provisions go into effect, although some will have no practical effect until other provisions listed in this table go into effect.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

A. Submission of Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

B. Specific Questions

FDA is seeking comment on questions that may affect requirements we include in a final rule. You do not need to respond to any of these questions in order to submit a comment; you may respond to any, all, or none of these questions, and you may submit

comments on any topic relating to the purposes of this rule, regardless of whether a topic is addressed by these questions.

Objectives of the UDI System and Potential Uses of UDIs

Section I.A of this document discusses the objectives of the UDI system and some of the potential uses of UDIs.

1. Which of the objectives and potential uses identified for the UDI system are most important to you? Are there any important objectives or uses we have not identified or have not adequately discussed? If you consider any objective or use identified here inappropriate, unimportant, or unconvincing, please identify the objective or use and explain your views.

Implementation of the UDI System—Effective Dates

The proposed rule phases in its requirements over several years; see table 7 of this document for a summary of the effective dates.

2. Do the proposed effective dates provide adequate time to prepare to meet the rule's requirements? If you believe a particular effective date does not provide adequate time to prepare to meet one or more of the rule's requirements, please identify the requirement, provide an explanation of the difficulties you foresee in meeting the requirement, and provide a suggested effective date that would provide adequate time to prepare to meet the requirement.

The proposed effective date for the requirement to provide dates on medical devices that conform to a specific format, is 1 year after the publication of the final rule. Not all device labels would require date format changes.

3. Will the 1-year effective date result less efficient planning as compared to a later date? Taking into account the effective dates for the other requirements of the proposed rule, what should be the effective date for the formatted date requirement and why?

UDI Labeling Requirements

The proposed rule would require the label of each medical device and device package to bear a UDI, except where an exception is available or FDA has authorized an alternative; see proposed § 801.20. The rule would further require that every UDI be provided in two forms: an easily-readable plain-text form and through inclusion of AIDC technology (e.g., a bar code, RFID tag, or any other technology) that conveys the equivalent of the UDI; see proposed § 801.45.

4. Is the requirement for a plain-text UDI clear? If you believe the requirement for a plain-text UDI would require changes to your labeling processes that are substantially different from those required for other types of labeling changes that you routinely make, please describe the changes you would have to make and provide an estimate of the cost of those changes.

5. Is the requirement for an AIDC technology clear? What type of AIDC technology do you expect to use? If you believe the requirement for AIDC would require changes to your manufacturing, labeling, or packaging processes that are substantially different from those required for other types of labeling changes that you routinely make, please describe the changes you would have to make and provide an estimate of the cost of those changes.

Combination Products

We propose to require a UDI for every combination product for which the primary mode of action is that of a device. See proposed § 801.25(a). Furthermore, we propose to require a UDI for each device constituent part of a combination product, regardless of whether a UDI is required for the combination product, except for a device constituent part that is physically, chemically, or otherwise combined with other constituents of a combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product. See proposed § 801.25(b).

6. If a combination product's primary mode of action is that of a device, is it appropriate to require each device constituent part of the combination product to bear its own UDI?

7. If a combination product's primary mode of action is *not* that of a device, is it appropriate to require each device constituent part of the combination product to bear its own UDI?

UDI Labeling of Certain Combination Products That are Not Labeled With an NDC

Proposed § 801.25(a) would require a UDI on the label and device package of every combination product whose primary mode of action is that of the device. A combination product whose primary mode of action is that of the drug or biologic would not be subject to this requirement, but would be subject to drug and biologic labeling requirements. Many, but not all, drugs and biologics must include a barcode on the product's label. See 21 CFR 201.25. The barcode must contain, at a minimum, the appropriate NDC. See 21 CFR 201.25. FDA has also proposed a rule that would require an NDC in human readable form on the label of certain drugs and biologics. See 71 FR 51276, August 29, 2006. When an NDC is present, FDA intends to make it possible to determine whether the combination product has a device constituent part and, if so, the identity of each device constituent part. However, if a combination product has a primary mode of action of a drug or biologic but is not required to include an NDC, there will be a gap in the medical community's ability to easily and accurately identify any devices within a combination product without opening the package and examining its contents; device constituent parts within this labeling gap will not be subject to the same benefits this rule offers for other devices.

We may be able to fill this labeling gap by requiring a UDI for every combination product that has a device constituent part, regardless of its primary mode of action, *except* when:

- The primary mode of action is *not* that of a device, *and*
- The combination product is labeled with an NDC.

Only in those circumstances would a UDI not be required on the label and package of the combination product. Such a provision would ensure that there is always either an NDC or a UDI on *every* combination product, and would facilitate the identification of those combination products that would otherwise not be labeled with either an NDC or UDI identifier. This alternative would not interfere with any future FDA initiative to require NDCs on any combination product (because, if a product bears an NDC, the alternative provision would not require a UDI on the combination product).

8. Should FDA require a UDI on the label and package of every combination product that has a device constituent part, regardless of its primary mode of action, *except* when the primary mode of action is *not* that of a device, *and* the combination product is labeled with an NDC?

Convenience Kits

We propose to require a UDI on each convenience kit and each device in a convenience kit, except for single use devices. The reason for requiring a UDI on each device in a convenience kit is that such devices often become separated from the convenience kit, and are then put to use. Some convenience kits, such as a basic first aid kit, may include devices that do bear a UDI because of the exception of proposed § 801.30(a)(11); that exception would

exempt a device packaged in a convenience kit from our UDI labeling requirements if that device is intended for a single use.

9. Is it necessary to require a UDI for each device included in a convenience kit?

10. Would it be appropriate to provide an additional exception from UDI labeling for any class I device included in a convenience kit, even if intended for more than just one single use?

11. Instead of requiring a UDI *on the label of each device* included in a convenience kit, would it be more appropriate to require the *label of the convenience kit* to identify each device included in the kit, together with the UDI of each such device (this would include the UDI of a device that does not bear a UDI because of the exception of proposed § 801.30(a)(11)?

Direct Marking

We propose to require certain medical devices to bear a UDI as a ''direct marking'' on the device. The devices that would be subject to this requirement are: (1) An implantable device; (2) a device that is intended for more than one use, and that is intended to be sterilized before each use; and (3) stand-alone software. We provide alternatives to direct marking in proposed § 801.50(e) and exceptions in § 801.50(f).

Direct marking will help ensure the accurate identification of the device, even if separated from its label and labeling. We would not require direct part marking of all devices, because we believe the costs and challenges of such an approach substantially exceed the potential benefit to the UDI system.

12. Is it appropriate to require direct marking for all implantable devices? Should the requirement be limited to certain types of implants? If so, how should we define which *implantable devices* meet that requirement?

13. Is it appropriate to require direct marking for all devices intended for more than one use that require sterilization before each use? Are there good reasons to require direct marking for all devices intended for more than one use, regardless of whether the device must be sterilized before each use?

14. The proposed rule would require direct marking of stand-alone software devices, but does not define ''stand-alone software.'' The exception provided by proposed § 801.50(e)(6) makes it clear that ''stand-alone software'' does not include software that is ''a component of a medical device.'' Because the term ''component'' has been in common use for many years, FDA believes that the medical device industry has an adequate understanding of when software is stand-alone software that is itself a medical device and when software is only a component of a medical device.

Does the ''component'' distinction provide enough clarity for you to understand when software is stand-alone software that requires direct marking? If not, please suggest how FDA could define ''stand-alone software'' so that it would be clear when software must be directly marked.

15. Are there other types of devices that you believe would benefit from direct marking? If you were to prioritize the need for direct marking of different types of devices, what devices are most in need of direct marking to ensure their adequate identification through distribution and use? What attributes do these devices have in common that makes direct marking important?

UDI Labeling Exceptions and Alternatives

Proposed § 801.30 provides categorical exceptions to the requirement for a device to bear a UDI, and proposed § 801.35 provides for case-by-case exceptions and alternatives to the UDI regulatory system. Procedures for requesting an exception or alternative are provided at proposed § 801.35(a).

16. Are any of the categorical exceptions provided by proposed § 801.30 inappropriate? If so, identify the exception and explain why you believe the exception is inappropriate.

17. Are there any additional categorical exceptions that you believe would be appropriate? Please explain.

18. Under the exception provided by proposed § 801.30(a)(1), a class I device that FDA has exempted from our GMP requirements would not be required to bear a UDI. To help reviewers understand the scope of this exception, we have provided a list of class I devices, by product code, that currently would qualify for this exception; see Ref. 9. Our questions regarding this exception are: 18.1. Is this exception—for class I devices that are exempt from GMP requirements—appropriate? 18.2. Referring to the devices listed in reference 10, are there any devices for which this exception is not appropriate and which should be required to bear a UDI? 18.3. Are there other class I devices that are exempt from GMP requirements that do not appear to have been identified in the reference 10 list?

19. Class I devices are very diverse, and include devices available only at retail, basic but critical dental and surgical instruments and medical equipment, and products used in testing and diagnosis. Under proposed 801.30(c), we propose to except all of these devices from the proposed requirement that their labels bear a production identifier. Many of these class I devices are also subject to other proposed exceptions. For example, devices, including class 1 devices sold at retail like dental floss, menstrual pads, hot/cold compresses, adhesive bandages, reading glasses, and sunglasses are exempt under proposed 21 CFR 801.30(a)(1). Although Class I devices are generally low risk or very well understood devices, we note the class includes devices that have been recalled or the subject of serious patient safety concerns. For such devices, the benefit of requiring that their labels bear device identifiers likely outweighs the cost savings of excepting such devices entirely from UDI. FDA is soliciting comment on: (1) whether additional class I devices, additional categories of class I devices, or all class I devices should be granted exceptions from device identifier requirements; and (2) whether any class I devices covered by the proposed rule should be subject to the requirement that their labels bear a production identifier.

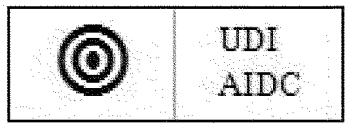
20. Does the procedure in proposed § 801.35(a) provide a reasonable basis for accommodating requests for exceptions from, or alternatives to, the general rule for UDI labeling?

Form of a Unique Device Identifier

We propose to require use of AIDC technology whenever a device is labeled with a UDI. We do not specify what technology may be used. Our intent is to allow for the advancement of such technologies, leaving the decision to the healthcare community and issuing agencies. When the AIDC technology is not visible on the label or package (e.g., an RFID tag or near-field communication), the label would have to include a symbol that provides notice of the presence of the AIDC technology.

21. Should FDA require the use of specific AIDC technologies or have a role in approving the use of new AIDC technologies that are used to provide a UDI, or should we leave this decision to the healthcare community and issuing agencies?

22. We propose to permit use of a generic symbol to provide notice of the presence of AIDC technology that provides a UDI:



Should we restrict this provision to allow use of the generic symbol only when there is no symbol endorsed in an international standard, and no symbol generally recognized by the persons who typically use the device? For example, there are recognized symbols for RFID and NFC technologies; should we require use of one of those recognized symbols when that form of AIDC technology is used?

Roles of the Issuing Agency

We are proposing a system that would permit multiple issuing agencies to offer differing UDI systems, so long as each system meets our UDI system requirements (see proposed § 801.45, Form of a UDI, and proposed § 830.20, Requirements for a unique device identifier). This is intended to allow for competition, which may have benefits, both in terms of UDI system features and the costs to device labelers.

23. Do the accreditation requirements outlined in proposed § 830.100 provide sufficient opportunity for interested and qualified organizations to be accredited as an issuing agency?

24. Will the existence of multiple UDI systems confuse device user facilities or impose unreasonable costs on device user facilities?

25. Would it be preferable for FDA to accredit only one national issuing agency, through careful evaluation of the strengths and weaknesses of alternative systems, through a competitive contract or some other means? If you believe a single national issuing agency would be preferable, please explain your views and explain how FDA should make such a designation, including neutral criteria that FDA should apply when evaluating possible candidates.

We are proposing to require an issuing agency to be either a private nonprofit organization or a State agency. The reason for this is to minimize potential conflicts of interest and to help assure that the fees assessed by an issuing agency are reasonable to small businesses.

26. Are there compelling reasons to permit a for-profit organization to be accredited as an issuing agency?

Data Submission Requirements and the GUDID

Proposed § 830.330 would require each device labeler to designate a contact who would be responsible for providing FDA with information relating to the identification of the labeler's medical devices. For each device labeled with a UDI, the contact would have to provide information concerning the labeler and each version or model of a device labeled with a UDI.

27. If you believe any of the information that would be required by proposed § 830.330 is *not* necessary to assure the adequate identification of a medical device, please identify the information you believe is unnecessary and provide an explanation of your views.

28. If you believe that *additional* information should be required to assure the adequate identification of a medical device, please identify the information you believe is necessary and provide an explanation of your views. Some additional attributes that have been suggested are:

a. Prescription and/or over-the-counter;

b. Magnetic Resonance Imaging (MRI) Compatibility Type (safe, unsafe, conditional); if conditional, the description of the conditions;

c. Storage and handling conditions (e.g., maximum storage temperature, needs to be refrigerated, keep out of light);

d. Country of origin, manufacturer, and/or intended sale

e. Short and/or long descriptions

f. Marketed for home use

g. Labeled as hazardous

h. Contains radioactive isotopes (radioactive element and atomic number)

i. Has Material Safety Data Sheet (MSDS)—MSDS Hyperlink

Please provide your views on the need for each of these additional attributes. If you believe an attribute would be useful, should it be part of our mandatory reporting requirements (proposed § 830.310), or should it be collected on a voluntary basis as ancillary information (proposed § 830.340)?

We are proposing to require submission of UDI data no later than the date the label of the device must bear a UDI. See proposed § 830.330. We believe that the availability and speed of Internet connections makes any delay unnecessary and counterproductive.

29. If you believe that it is unreasonable to tie submission of UDI data to the date the label of the device must bear a UDI, please suggest an alternative time frame and provide an explanation of why the delay in submission of information is necessary.

Our proposed rule does not specify the process for the electronic submission of information to the GUDID. Instead, we plan to explain the submission process in guidance. Our current thinking is that we would provide two ways to submit data to the GUDID:

- Data could submitted as part of a structured product label (SPL) conforming to an ANSI/Health Level Seven (HL7) format (Ref. 7) that meets specifications set by FDA; we believe this is the approach most larger labelers would prefer, as it is based on an existing international standard that is already used for submission of data to FDA, and can readily accommodate the efficient submission of multiple records.
- Each data element could be entered directly into the GUDID through a secure Internet site designed for simple, low-volume data entry with on-line help, similar to the approach currently used for electronic registration and listing; we believe this approach may be preferred by some small labelers that would need to provide data for only a few devices.

30. Do these two approaches for data submission provide sufficient options for submitting data to the GUDID? If you are a labeler, which approach would you expect to use? If you expect to use both, please discuss the circumstances that would lead you to use one or the other approach.

31. What information would FDA need to provide in its guidance on submitting data to the GUDID? What questions would you want to see asked and answered in the guidance?

Format of Dates Provided on Medical Device Labels

Proposed § 801.18 would require all dates provided on medical device labels to conform to a specified format: Month Day, Year, with the month shown as a three-letter abbreviation of the month (e.g. SEP 30, 2011). This is the format most commonly used in the United States. But internationally, a different format—Day Month Year (30 SEP 2011)—is more prevalent.

32. Will a specified format for dates on medical device labels reduce confusion concerning expiration dates?

33. Which format would patients better understand, the ''U.S.'' format (e.g., SEP 30, 2011), or the ''international'' format (e.g., 30 SEP 2011)?

34. Which format would health care professionals better understand, the ''U.S.'' format (e.g., SEP 30, 2011), or the ''international'' format (e.g., 30 SEP 2011)?

35. Is there a strong reason to favor one format over the other?

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday

through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

1. See referenced ISO standards and ISO Technical Committees listed at *http://www.iso.org/iso/standards_development/technical_committees/list_of_iso_technical_committees/iso_technical_committee.htm?commid=45332.*
2. For information about UPC and other barcodes and GS1, go to *http://www.gs1us.org/standards/barcodes.*
3. ''The Health Industry Bar Code (HIBC) Supplier Labeling Standard,'' ANSI/HIBC 2.3–2009, Health Industry Business Communications Council, 2009, at *http://www.hibcc.org/AUTOIDUPN/ANSI%20HIBC%202.3%20SLS%202009.pdf.*
4. ''Automatic Identification of Medical Devices,'' ECRI Institute, August 17, 2005.
5. See record and public comments related to the October 25, 2006, and February 12, 2009, public meetings, referenced at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/.*
6. See ERG's 2006 report at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/UniqueDeviceIdentification/ucm054169.htm.*
7. See discussion of HL7 implementation of SPL model for medical product information at *http://wiki.hl7.org/index.php?title=Medical_Product_Information_(SPLr5).*
8. Letter from Michael D. Maves, MD, MBA, Executive Vice President and CEO, American Medical Association, regarding confusion caused by inconsistencies in the presentation of expiration dates on medical devices, August 27, 2008.
9. List of class I devices, by product code, that FDA has by regulation exempted from the GMP requirements of 21 CFR part 820, Quality Systems Regulation, FDA, April 2012.
10. Unique Device Identification System; Proposed Rule: Preliminary Regulatory Impact Analysis; Initial Regulatory Flexibility Analysis; Unfunded Mandates Reform Act Analysis.
11. Supporting Statement for Unique Device Identification (UDI) System, 21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830, OMB No. 0910–NEW.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Parts 803, 806, and 821

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 810

Administrative practice and procedure, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Parts 820 and 822

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 830

Administrative practice and procedure, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.,* as amended) and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 be amended to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Amend § 16.1(b)(2) by numerically adding an entry for ''§ 830.130'' to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 830.130, relating to suspension or revocation of the accreditation of an issuing agency.

* * * * *

PART 801—LABELING

3. The authority citation for part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

Subpart A—[Amended]

4. Amend subpart A of part 801 by adding § 801.3 to read as follows:

§ 801.3 Definitions.

Automatic identification and data capture (AIDC) means any technology that conveys the unique device identifier (UDI) or the device identifier of a device in a form that can be entered into an electronic patient record or other computer system via an automated process.

Center Director means the Director of the Center for Devices and Radiological Health or the Director of the Center for Biologics Evaluation and Research, depending on which Center has been assigned lead responsibility for the device.

Combination product has the meaning set forth in § 3.2(e) of this chapter.

Convenience kit means two or more different types of medical devices packaged together for the convenience of the user.

Device package means a package that contains a fixed quantity of devices.

Expiration date means the date by which the label of a device states the device must or should be used.

Finished device means any device or accessory to any device that is suitable for use or capable of functioning.

FDA, we, or *us* means the Food and Drug Administration.

Global Unique Device Identification Database (GUDID) means the database that serves as a repository of information about devices to facilitate the identification of medical devices through their distribution and use.

Implantable device means a device that is intended to be placed in a surgically or naturally formed cavity of the human body. A device is regarded as an *implantable device* for the purpose of this part only if it is intended to remain implanted continuously for a period of 30 days or more, unless the Commissioner of Food and Drugs determines otherwise in order to protect human health.

Label has the meaning set forth in section 201(k) of the Federal Food, Drug, and Cosmetic Act.

Labeler means:

(1) Any person who causes a label to be applied to a device with the intent that the device will be introduced into interstate commerce without any intended subsequent replacement or modification of the label; and

(2) Any person who causes the label of a device to be modified with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label, except that the addition of the name of, and contact information for, a person who distributes the device, without making any other changes to the label, is not a modification for the purposes of determining whether a person is a labeler.

Lot or batch means one *finished device* or more that consists of a single type, model, class, size, composition, or software version that is manufactured under essentially the same conditions

and that are intended to have uniform characteristics and quality within specified limits.

Shipping container means a package, container, or pallet used during the shipment or transportation of devices from one point to another, and whose contents may vary from one shipment to another.

Specification means any requirement with which a device must conform.

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

Universal product code (UPC) means the product identifier used to identify a company and product name of an item sold at retail in the United States.

Version or model means a device package containing one or more devices that have identical specifications, performance, size, and composition, within specified limits.

4a. Amend subpart A of part 801 by adding § 801.18 to read as follows:

§ 801.18 Format of dates provided on a medical device label.

(a) Whenever the label of a medical device includes an expiration date, a date of manufacture, or any other date intended to be brought to the attention of the user of the device, the date shall be presented in the following format: Month Day, Year (e.g., JAN 1, 2012).

(b) All dates must include a day; a date composed only of a month and year does not meet the requirements of this section.

(c) The month shall be shown as a three-letter abbreviation of the name of the month, presented in capital letters as follows:

Month	Abbreviation
January	JAN.
February	FEB.
March	MAR.
April	APR.
May	MAY.
June	JUN.
July	JUL.
August	AUG.
September	SEP.
October	OCT.
November	NOV.
December	DEC.

(d) The day shall be shown in modern Arabic numerals, with no leading zeros (e.g., 1, 2, 3, * * * 29, 30, 31).

(e) The year shall be shown in modern Arabic numerals, using the civil calendar in use in the United States, using four digits (e.g., 2012).

(f) The following is an exception for date of manufacture of an electronic product to which a standard is applicable under subchapter J, Radiological Health: If the device is an electronic product to which a standard is applicable under subchapter J, Radiological Health of this chapter, the date of manufacture shall be presented as required by § 1010.3(a)(2)(ii) of this chapter.

5. Add subpart B consisting of §§ 801.20 to 801.57 to read as follows:

Subpart B—Labeling Requirements for Unique Device Identification

Sec.
801.20 Label to bear a unique device identifier (UDI).
801.25 Unique device identifiers for combination products, device constituents parts of a combination product, convenience kits, and devices packaged in a convenience kit.
801.30 General exceptions from the requirement for the label of a device to bear a unique device identifier.
801.35 Request for an exception from or alternative to the requirement for a device to bear a unique device identifier.
801.40 Voluntary labeling of a device with a unique device identifier.
801.45 Form of a unique device identifier.
801.50 Devices that must be directly marked with a unique device identifier.
801.57 Discontinuation of legacy FDA identification numbers assigned to devices.

Subpart B—Labeling Requirements for Unique Device Identification

§ 801.20 Label to bear a unique device identifier (UDI).

(a) *In general:*

(1) The label of every medical device shall bear a unique device identifier (UDI) that meets the requirements of this subpart and part 830.

(2) Every device package shall bear a UDI that meets the requirements of this subpart and part 830.

(b) *Effective dates.* The requirements of paragraph (a) of this section become effective:

(1) If the device is a class III medical device or is a device licensed under the Public Health Service Act, [A DATE WILL BE ADDED 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(2) If the device is a class II medical device, [A DATE WILL BE ADDED 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(3) If the device is a class I medical device, [A DATE WILL BE ADDED 5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**];

(4) If the device is not classified into class I, II, or III, [specific date, 5 years after publication of a final rule].

(c) *Exceptions.* Exceptions to the general rule of paragraph (a) of this section are provided by §§ 801.30, 801.35, and 801.128(f)(2).

§ 801.25 Unique device identifiers for combination products, device constituent parts of a combination product, convenience kits, and devices packaged in a convenience kit.

(a) *Application to combination products.* The label and each device package of every combination product for which the primary mode of action is that of a device shall bear a unique device identifier (UDI) as provided by § 801.20. The requirements of § 801.20 become effective on the earlier of:

(1) If FDA has classified the combination product under a medical device classification regulation or other classification action, the date that applies to such classification under § 801.20(b); or

(2) The earliest date that applies under § 801.20(b) to any device constituent part of the combination product.

(b) *Device constituent parts of a combination product.* The label and each device package of each device constituent part of a combination product shall bear its own unique device identifier (UDI), distinct from any UDI assigned to the combination product, and regardless of whether the combination product is required to have a UDI, except that a UDI is not required for a device constituent part that is physically, chemically, or otherwise combined with other constituents of a combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product.

(c) *Application to convenience kits.* The label and each device package of every convenience kit shall bear a UDI as provided by § 801.20. The

requirements of § 801.20 become effective with regard to a convenience kit on the earlier of:

(1) If FDA has classified the convenience kit under a medical device classification regulation or other classification action, the date that applies to such classification under § 801.20(b); or

(2) The earliest date that applies under § 801.20(b) to any device included in the convenience kit.

(d) *Devices included in a convenience kit.* The label and each device package of each device that is packaged in a convenience kit shall bear its own UDI, distinct from that of the convenience kit, unless the device is intended for a single use.

§ 801.30 General exceptions from the requirement for the label of a device to bear a unique device identifier.

(a) *In general.* The following types of devices are excepted from the requirement of § 801.20; a device within one or more of the following exceptions is not required to bear a unique device identifier (UDI):

(1) A device, other than a prescription device, that is made available for purchase at a retail establishment. This exception shall also apply to such a device when delivered directly to a hospital, ambulatory surgical facility, nursing home, outpatient treatment facility, or other health care facility.

(2) A class I device that FDA has by regulation exempted from the good manufacturing practice requirements of part 820 of this chapter.

(3) Individual class I, single-use devices, all of a single version or model, that are distributed together in a single device package, whose uses are generally known to the persons by whom they are intended to be used, and which are not intended for individual sale. The device package containing these individual devices is not exempt from the requirement of § 801.20, and must bear a UDI.

(4) A device used solely for research, teaching, or chemical analysis, and not intended for any clinical use.

(5) A custom device within the meaning of § 812.3(b).

(6) An investigational device within the meaning of part 812.

(7) A veterinary medical device not intended for use in the diagnosis of disease or other conditions in man, in the cure, mitigation, treatment, or prevention of disease in man, or intended to affect the structure or any function of the body of man.

(8) A device intended for export from the United States.

(9) A device held by the Strategic National Stockpile and granted an exception or alternative under § 801.128(f)(2).

(10) A device for which FDA has established a performance standard under section 514(b) of the Federal Food, Drug, and Cosmetic Act and has provided therein an exception from the requirement of § 801.20, or for which FDA has recognized all or part of a performance standard under section 514(c) of the Federal Food, Drug, and Cosmetic Act and has included an exception from the requirement of § 801.20 within the scope of that recognition.

(11) A device constituent part of a combination product that is physically, chemically, or otherwise combined with other constituents of the combination product in such a way that it is not possible for the device constituent part to be used except as part of the use of the combination product.

(12) A device that is packaged in a convenience kit, *provided that* the device is intended for a single use.

(b) *Exception for shipping containers.* This rule does not require a unique device identifier to be placed on any shipping container.

(c) *The unique device identifier (UDI) of a class I device is not required to include a production identifier.*

§ 801.35 Request for an exception from or alternative to the requirement for a device to bear a unique device identifier.

(a) A labeler may submit a request for an exception from or alternative to the requirement of § 801.20 or any requirement of this subpart for a specified device or a specified type of device. A written request for an exception or alternative must:

(1) Identify the device that would be subject to the exception or alternative;

(2) Identify the provisions of this subpart that are the subject of the request for an exception or alternative;

(3) If requesting an exception, explain why you believe the requirements of this subpart are not technologically feasible;

(4) If requesting an alternative, describe the alternative and explain why it would provide for more accurate, precise, or rapid device identification than the requirements of this subpart or how the alternative would better ensure the safety or effectiveness of the device that would be subject to the alternative;

(5) Provide an estimate of the number of labelers and the number of devices that would be affected if we grant the requested exception or alternative; and

(6) Provide other requested information that the Center Director needs to clarify the scope and effects of the requested exception or alternative.

(b) A request for an exception or alternative under paragraph (a) of this section may be submitted as part of a device premarket submission.

(1) FDA may grant a request for an exception or alternative submitted as part of an FDA premarket submission within the context of our approval or clearance of the device that is the subject of the premarket submission.

(2) FDA will not respond to a request for an exception or alternative submitted as part of an FDA premarket submission if we do not approve or clear the device that is the subject of the premarket submission.

(c) A written request that is not submitted as part of an FDA premarket submission should be submitted to: Division of Small Manufacturers, Consumer, and International Assistance (DSMICA), Center for Devices and Radiological Health, Bldg. 66, rm. 4621, 10903 New Hampshire Ave., Silver Spring, MD 20993.

(d) The Center Director may grant a request for an exception or alternative, either in response to a request or on his or her own initiative, if the Center Director determines that an exception is appropriate because the requirements of this subpart are not technologically feasible, or that an alternative would provide for more accurate, precise, or rapid device identification than the requirements of this subpart or would better ensure the safety or effectiveness of the device that would be subject to the alternative. If we grant an exception or alternative, we may include any safeguards or conditions deemed appropriate to ensure the adequate identification of the device through its distribution and use.

§ 801.40 Voluntary labeling of a device with a unique device identifier.

(a) The labeler of a device that is not required to bear a unique device identifier (UDI) may voluntarily comply with § 801.20. If a labeler voluntarily includes a UDI for a device, the labeler may voluntarily provide information concerning the device under subpart E of part 830.

(b) The labeler of a device that is sold at retail may label that device with both a Universal Product Code (UPC) and a UDI.

§ 801.45 Form of a unique device identifier.

(a) Every unique device identifier (UDI) must meet the technical requirements of § 830.20 of this chapter. The UDI must be presented in two forms:

(1) Easily-readable plain-text, and

(2) Automatic identification and data capture (AIDC) technology.

(b) The UDI must include a device identifier segment. Whenever a device is labeled with a lot or batch number, a serial number, a manufacturing date, or an expiration date, the UDI must include a production identifier segment that conveys such information.

(c) If the AIDC technology is not evident upon visual examination of the label or device package, the label or device package must bear a symbol that provides notice of the presence of AIDC technology. The symbol may be a symbol approved by the issuing agency, a symbol endorsed in a national or international standard recognized by FDA under section 514(c) of the FD&C Act and pertaining to the AIDC technology, a symbol generally recognized by the persons who typically use the device, or the following generic symbol:

§ 801.50 Devices that must be directly marked with a unique device identifier.

(a) *In general.* A device that must be labeled with a unique device identifier (UDI) must also bear a permanent marking providing the UDI on the device itself if the device is:

(1) An implantable device;

(2) Intended to be used more than once, and intended to be sterilized before each use; or

(3) Stand-alone software.

(b) *UDI for direct marking.* The UDI provided through a direct marking on a device may be:

(1) Identical to the UDI that appears on the label of the device, or

(2) A different UDI used to distinguish the unpackaged device from any package containing the device.

(c) *Form of a UDI when provided as a direct marking.* When a device must bear a UDI as a direct marking, the UDI must be provided in the following manner:

(1) If the device is an implantable device, or the device is intended for more than one single use and intended to be sterilized before each use, the UDI must be provided through either or both of the following:

(i) Easily-readable plain-text;

(ii) Automatic identification and data capture (AIDC) technology, or any alternative technology, that will provide the UDI of the device on demand.

(2) If the device is stand-alone software, the UDI must be provided through either or both of the following:

(i) An easily-readable plain-text statement displayed whenever the software is started;

(ii) An easily-readable plain-text statement displayed through a menu command (e.g., an ''About * * *'' command).

(d) *Effective dates.* The requirements of this section apply to a device 2 years after the date that applies to the device under § 801.20.

(e) *Exceptions.* The requirement of paragraph (a) of this section shall not apply to any device that meets any of the following criteria:

(1) Direct marking would interfere with the safety or effectiveness of the device;

(2) The device cannot be directly marked because it is not technologically feasible;

(3) The device is intended to remain implanted continuously for a period of less than 30 days, unless the Commissioner determines otherwise in order to protect human health;

(4) The device has been previously marked under paragraph (a);

(5) The device is sold at retail and bears a Universal Product Code (UPC);

(6) Software that is not stand-alone software, but which is a component of a medical device.

(f) *Exception to be noted in design history file.* If you decide not to mark a device after determining that an exception applies under paragraph (e) of this section, you must document the basis of your decision in the design history file required by § 820.30(j) of this chapter of the Quality System Regulation.

(g) *Submission of notice to FDA.* If you decide not to mark a device after determining that an exception applies under paragraph (e)(1) or (e)(2) of this section, you must send a notice to FDA:

(1) Your notice to FDA must provide the following information:

(i) Identification of the exception, or exceptions, that you are invoking;

(ii) An explanation of the factors that make the exception appropriate for your device;

(iii) The name of, and contact information for, the person who determined that the exception is appropriate for your device.

(2) Your notice must be submitted to FDA no later than the date you begin distribution of the device that is the subject of the notice.

(3) Your notice should be submitted to: Division of Small Manufacturers, Consumer, and International Assistance (DSMICA), Center for Devices and Radiological Health, Bldg. 66, rm. 4621, 10903 New Hampshire Ave., Silver Spring, MD 20993.

§ 801.57 Discontinuation of legacy FDA identification numbers assigned to devices.

On the date your device must be labeled with a unique device identifier (UDI), any National Health-Related Item Code (NHRIC) or National Drug Code (NDC) number assigned to that device is rescinded, and you may no longer provide an NHRIC or NDC number on the label of your device or on any device package.

6. Revise § 801.119 to read as follows:

§ 801.119 In vitro diagnostic products.

A product intended for use in the diagnosis of disease and which is an in vitro diagnostic product as defined in § 809.3(a) of this chapter shall be deemed to be in compliance with the requirements of this part and section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act if it meets the requirements of subpart B of this part and the requirements of § 809.10 of this chapter.

7. Amend § 801.128 by redesignating paragraphs (f)(2) through (f)(7) as (f)(3) through (f)(8), and by adding new paragraph (f)(2) to read as follows:

§ 801.128 Exceptions or alternatives to labeling requirements for medical devices held by the Strategic National Stockpile.

* * * * *

(f) * * *

(2) Subpart B of this part and part 830 in its entirety;

* * * * *

PART 803—MEDICAL DEVICE REPORTING

8. The authority citation for part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

9. Amend § 803.3 by alphabetically adding the definition for ''Unique device identifier (UDI)'' to read as follows:

§ 803.3 How does FDA define the terms used in this part?

* * * * *

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A *unique device identifier* is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

* * * * *

10. Amend § 803.32 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), and by adding new paragraph (c)(6) to read as follows:

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

11. Amend § 803.33 by redesignating paragraphs (a)(7)(iv) through (a)(7)(vi) as paragraphs (a)(7)(v) through (a)(7)(vii), and by adding new paragraph (a)(7)(iv) to read as follows:

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

(a) * * *

(7) * * *

(iv) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

12. Amend § 803.42 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), and by adding new paragraph (c)(6) to read as follows:

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

13. Amend § 803.52 by redesignating paragraphs (c)(6) through (c)(10) as paragraphs (c)(7) through (c)(11), and by adding new paragraph (c)(6) to read as follows:

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

* * * * *

(c) * * *

(6) The unique device identifier (UDI) that appears on the device label or on the device package;

* * * * *

PART 806—MEDICAL DEVICES; REPORTS OF CORRECTIONS AND REMOVALS

14. The authority citation for part 806 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

15. Amend § 806.2 by adding paragraph (m) to read as follows:

§ 806.2 Definitions.

* * * * *

(m) *Unique device identifier* (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

16. Amend § 806.10 by revising paragraph (c)(5) to read as follows:

§ 806.10 Reports of corrections and removals.

* * * * *

(c) * * *

(5) The unique device identifier (UDI) that appears on the device label or on the device package, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

* * * * *

17. Amend § 806.20 by revising paragraph (b)(2) to read as follows:

§ 806.20 Records of corrections and removals not required to be reported.

* * * * *

(b) * * *

(2) The unique device identifier (UDI) of the device, or the device identifier, universal product code (UPC), model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

* * * * *

PART 810—MEDICAL DEVICE RECALL AUTHORITY

18. The authority citation for part 810 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 355, 360h, 360i, 371, 374, 375.

19. Amend § 810.2 by adding paragraph (l) to read as follows:

§ 810.2 Definitions.

* * * * *

(l) *Unique device identifier* (*UDI*) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

20. Amend § 810.10 by removing the word ''and'' at the end of paragraph (b)(2)(iii) and by adding paragraph (b)(2)(v) to read as follows:

§ 810.10 Cease distribution and notification order.

* * * * *

(b) * * *

(2) * * *

(v) The unique device identifier (UDI) that appears on the device label or on the device package; and

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

21. The authority citation for part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

22. Amend § 814.3 by adding paragraphs (p) and (q) to read as follows:

§ 814.3 Definitions.

* * * * *

(p) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the

requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(q) *Universal product code* (UPC) means the product identifier used to identify a company and product name of an item sold at retail in the United States.

23. Amend § 814.84 by adding paragraph (b)(4) to read as follows:

§ 814.84 Reports.

* * * * *

(b) * * *

(4) Identify each device identifier currently in use for the device, and each device identifier for the device that has been discontinued since the previous periodic report. It is not necessary to identify any device identifier discontinued prior to [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

PART 820—QUALITY SYSTEM REGULATION

24. The authority citation for part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383; 42 U.S.C. 216, 262, 263a, 264.

25. Amend § 820.3 by adding paragraphs (bb) and (cc) to read as follows:

§ 820.3 Definitions.

* * * * *

(bb) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

(cc) *Universal product code (UPC)* means the product identifier used to identify a company and product name of an item sold at retail in the United States.

26. Amend § 820.120 by revising the first sentence of paragraph (b) to read as follows:

§ 820.120 Device labeling.

* * * * *

(b) *Labeling inspection.* Labeling shall not be released for storage or use until a designated individual(s) has examined the labeling for accuracy including, where applicable, the correct unique device identifier (UDI) or universal product code (UPC), expiration date, control number, storage instructions, handling instructions, and any additional processing instructions. * * *

* * * * *

27. Amend § 820.184 by revising paragraph (f) to read as follows:

§ 820.184 Device history record.

* * * * *

(f) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used.

28. Amend § 820.198 by revising paragraph (e)(3) to read as follows:

§ 820.198 Complaint files.

* * * * *

(e) * * *

(3) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used;

* * * * *

29. Amend § 820.200 by revising paragraph (d)(2) to read as follows:

§ 820.200 Servicing.

* * * * *

(d) * * *

(2) Any unique device identifier (UDI) or universal product code (UPC), and any other device identification(s) and control number(s) used;

* * * * *

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

30. The authority citation for part 821 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

31. Amend § 821.3 by adding paragraph (n) to read as follows:

§ 821.3 Definitions.

* * * * *

(n) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

32. Amend § 821.25 by revising paragraphs (a)(2)(i) and (a)(3)(i) to read as follows:

§ 821.25 Device tracking system and content requirements: manufacturer requirements.

(a) * * *

(2) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

* * * * *

(3) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier necessary to provide for effective tracking of the devices;

* * * * *

33. Amend § 821.30 by revising paragraphs (a)(2), (b)(2), and (c)(1)(i) to read as follows:

§ 821.30 Tracking obligations of persons other than device manufacturers: distributor requirements.

(a) * * *

(2) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

(b) * * *

(2) The unique device identifier (UDI), lot number, batch number, model

number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

(c) * * *

(1) * * *

(i) The unique device identifier (UDI), lot number, batch number, model number, or serial number of the device or other identifier used by the manufacturer to track the device;

* * * * *

PART 822—POSTMARKET SURVEILLANCE

34. The authority citation for part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

35. Amend § 822.3 by adding paragraph (n) to read as follows:

§ 822.3 How do you define the terms used in this part?

* * * * *

(n) *Unique device identifier (UDI)* means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20 of this chapter. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

36. Amend § 822.9 by revising paragraph (a)(4) to read as follows:

§ 822.9 What must I include in my submission?

* * * * *

(a) * * *

(4) Premarket application/submission number and device identifiers for your device;

* * * * *

37. Add part 830 to read as follows:

PART 830—UNIQUE DEVICE IDENTIFICATION

Subpart A—General Provisions

Sec.
830.3 Definitions.

Subpart B—Requirements for a Unique Device Identifier (UDI)

830.10 Incorporation by reference—Technical standards applicable to part 830.
830.20 Requirements for a unique device identifier.
830.40 Use and discontinuation of a device identifier.
830.50 Changes that result in a new version or model.
830.60 Relabeling of a device that is required to bear a unique device identifier.

Subpart C—FDA Accreditation of an Issuing Agency

830.100 FDA accreditation of an issuing agency.
830.110 Application for accreditation as an issuing agency.
830.120 Responsibilities of an FDA-accredited issuing agency.
830.130 Suspension or revocation of the accreditation of an issuing agency.

Subpart D—FDA as an Issuing Agency

830.200 When FDA will act as an issuing agency.
830.210 Eligibility for use of FDA as an issuing agency.
830.220 Termination of FDA service as an issuing agency.

Subpart E—Global Unique Device Identification Database

830.300 Devices subject to device identification data submission requirements.
830.310 Information required for unique device identification.
830.320 Submission of unique device identification information.
830.330 Times for submission of unique device identification information.
830.340 Voluntary submission of ancillary device identification information.
830.350 Records to be maintained by the labeler.

Authority: 21 U.S.C. 321, 331, 352, 353, 360, 360d, 360i, 360j, 371.

Subpart A—General Provisions

§ 830.3 Definitions.

Automatic identification and data capture (AIDC) means any technology that conveys the unique device identifier (UDI) or the device identifier of a device in a form that can be entered into an electronic patient record or other computer system via an automated process.

Center Director means the Director of the Center for Devices and Radiological Health or the Director of the Center for Biologics Evaluation and Research, depending on which Center has been assigned lead responsibility for the device.

Device package means a package that contains a fixed quantity of devices.

Expiration date means the date by which the label of a device states the device must or should be used.

FDA, we, or *us* means the Food and Drug Administration.

Federal Food, Drug, and Cosmetic Act means 21 U.S.C. 321 *et seq.,* as amended.

Global Unique Device Identification Database (GUDID) means the database that serves as a repository of information to facilitate the identification of medical devices through their distribution and use.

Issuing agency means an organization accredited by FDA to operate a system for the issuance of unique device identifiers.

Label has the meaning set forth in section 201(k) of the Federal Food, Drug, and Cosmetic Act.

Labeler means:

(1) Any person who causes a label to be applied to a device with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label; and

(2) Any person who causes the label of a device to be modified with the intent that the device will be introduced into interstate commerce without any subsequent replacement or modification of the label, except that the addition of the name of, and contact information for, a person who distributes the device, without making any other changes to the label, is not a modification for the purposes of determining whether a person is a labeler.

Lot or batch means one finished device (any device or accessory to any device that is suitable for use or capable of functioning) or more that consist of a single type, model, class, size, composition, or software version that are manufactured under essentially the same conditions and that are intended to have uniform characteristics and quality within specified limits.

Premarket submission means a premarket approval application; a product development protocol; a premarket report; a humanitarian device exemption application; a biologics license application; a supplement; a premarket notification submission; or a new drug application for a transitional device:

(1) *Premarket approval application* means an application for approval of a device submitted under section 515(c) of the Federal Food, Drug, and Cosmetic Act;

(2) *Product development protocol* means the application described in section 515(f) of the Federal Food, Drug, and Cosmetic Act.

(3) *Premarket report* means a report submitted under section 515(c)(2) of the Federal Food, Drug, and Cosmetic Act;

(4) *Humanitarian device exemption application* means an application for approval of a humanitarian use device submitted under section 520(m) of the Federal Food, Drug, and Cosmetic Act;

(5) *Biologics license application* means an application for approval of a device submitted under section 351 of the Public Health Service Act.

(6) *Premarket notification submission* means a report submitted under section 510(k) of the Federal Food, Drug, and Cosmetic Act;

(7) *New drug application for a transitional device* means a new drug application for a medical device that was regulated by FDA as a new drug prior to May 28, 1976, the date of enactment of the Medical Device Amendments of 1976.

Shipping container means a package, container, or pallet used during the shipment or transportation of devices from one point to another, and whose contents may vary from one shipment to another.

Small business means a medical device manufacturer with 500 or fewer employees, or a medical device relabeler or repackager with 100 or fewer employees.

Specification means any requirement with which a device must conform.

Unique device identifier (UDI) means an identifier that adequately identifies a device through its distribution and use by meeting the requirements of § 830.20. A unique device identifier is composed of:

(1) A *device identifier*—a mandatory, fixed portion of a UDI that identifies the specific version or model of a device and the labeler of that device; and

(2) A *production identifier*—a conditional, variable portion of a UDI that identifies one or more of the following when included on the label of the device:

(i) The lot or batch within which a device was manufactured;

(ii) The serial number of a specific device;

(iii) The expiration date of a specific device;

(iv) The date a specific device was manufactured.

Universal product code (UPC) means the product identifier used to identify a company and product name of an item sold at retail in the United States.

Version or model means a device package containing one or more devices that have identical specifications, performance, size, and composition, within specified limits.

Subpart B—Requirements for a Unique Device Identifier (UDI)

§ 830.10 Incorporation by reference—technical standards applicable to part 830.

(a) The following technical standards are incorporated by reference with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51:

(1) ISO/IEC 646:1991, Information technology—ISO 7-bit coded character set for information interchange (third edition, December 15, 1991).

(2) ISO/IEC 15459–2:2006(E), Information technology—Unique identifiers—Part 2: Registration procedures (second edition, March 1, 2006);

(3) ISO/IEC 15459–4:2008, Information technology—Unique identifiers—Part 4: Individual items (second edition, July 7, 2008);

(4) ISO/IEC 15459–6:2007, Information technology—Unique identifiers—Part 6: Unique identifier for product groupings (first edition, June 15, 2007);

(b) Copies are available for purchase from: ISO Central Secretariat, International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, telephone (dialing from the United States): 011–41–22–749–0111, Internet: *www.standardsinfo.net,* and are available for inspection at: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860, and at the National Archives and Records Administration (NARA). For information on how to review these standards at NARA, call 202–741–6030, or go to: *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

§ 830.20 Requirements for a unique device identifier.

A unique device identifier (UDI) must:

(a) Be issued under a system operated by FDA or an FDA-accredited issuing agency;

(b) Conform to international standards incorporated by reference by § 830.10;

(c) Use only characters and numbers from the invariant character set of ISO/IEC 646:1991, Information technology—ISO 7-bit coded character set for information interchange.

§ 830.40 Use and discontinuation of a device identifier.

(a) Only one device identifier from any particular system for the issuance of unique device identifiers may be used to identify a particular version or model of a device. A particular version or model may be identified by unique device identifiers (UDIs) from two or more systems for the issuance of UDIs.

(b) A device identifier shall be used to identify only one version or model.

(c) In the event that a version or model of a device is discontinued, its device identifier may not be reassigned to another device. If a discontinued version or model is re-introduced and no changes have been made that would require the use of a new device identifier, the device identifier that was previously in use may be used to identify the device.

(d) In the event that an issuing agency relinquishes or does not renew its accreditation, you may continue to label a device with a previously-issued UDI until such time as § 830.50 requires you to discontinue use of the UDI.

§ 830.50 Changes that result in a new version or model.

If you make any of the following changes to a device that is required to bear a UDI on its label, the change results in a new version or model and you must assign a new device identifier to the new version or model:

(a) You change the specifications, performance, size, or composition of the device to an extent greater than the specified limits;

(b) You change the quantity in a device package or add a new device package;

(c) You make a change that could significantly affect the safety or effectiveness of the device;

(d) You change from a nonsterile package to a sterile package, or from a sterile package to a nonsterile package; or

(e) You relabel the device.

§ 830.60 Relabeling of a device that is required to bear a unique device identifier.

If you relabel a device that is required to bear a unique device identifier (UDI), you must keep a record showing the relationship of the prior device identifier to your new device identifier.

Subpart C—FDA Accreditation of an Issuing Agency

§ 830.100 FDA accreditation of an issuing agency.

(a) *Eligibility.* A private nonprofit organization or a State agency may apply for accreditation as an issuing agency.

(b) *Accreditation criteria.* FDA may accredit an organization as an issuing agency, if the system it will operate:

(1) Will employ unique device identifiers (UDIs) that meet the requirements of this part to adequately identify a device through its distribution and use;

(2) Conforms to the international standards incorporated by reference at § 830.10;

(3) Will be available to all users according to a single set of consistent, fair, and reasonable terms and conditions.

§ 830.110 Application for accreditation as an issuing agency.

(a) *Application for initial accreditation.* (1) An applicant seeking initial FDA accreditation as an issuing agency shall notify FDA of its desire to be accredited by sending a notification to: Division of Small Manufacturers, Consumer, and International Assistance (DSMICA), Center for Devices and Radiological Health, Bldg. 66, rm. 4621, 10903 New Hampshire Ave., Silver Spring, MD 20993.

(2) *Following receipt of the notification.* FDA will provide the applicant with additional information to aid in submission of an application for approval as an issuing agency, together with an email address for submission of an application.

(3) The applicant shall furnish to FDA, via email to the email address we provide, an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant and, if the applicant is not a State agency, evidence of nonprofit status (for example, how it meets Internal Revenue Service requirements for a nonprofit organization);

(ii) Detailed descriptions of any standards or criteria the applicant will apply to participating labelers;

(iii) A detailed description of the guidelines that govern assignment of a unique device identifier (UDI) to a device;

(iv) A detailed description of the review and decision-making process the applicant will apply when determining whether a particular labeler may use the applicant's UDI system, including:

(A) Copies of the application forms, guidelines, instructions, and other materials the applicant will send to medical device labelers who wish to use the applicant's unique device identification system;

(B) Policies and procedures for notifying a labeler of deficiencies in its use of unique device identifiers;

(C) Procedures for monitoring a labeler's correction of deficiencies in its use of unique device identifiers;

(D) Policies and procedures for suspending or revoking a labeler's use of the applicant's UDI system, including any appeals process.

(v) Description of the applicant's electronic data management system with respect to its review and decision processes and the applicant's ability to provide electronic data in a format compatible with FDA data systems;

(vi) Fee schedules, if any, together with an explanation of any fee waivers or reductions that are available; and

(vii) Other information required by FDA to clarify the application for accreditation.

(b) *Application for renewal of accreditation.* An accredited issuing agency that intends to continue to serve as an issuing agency beyond its current term shall apply to FDA for renewal or notify FDA of its plans not to apply for renewal in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of its accreditation, an issuing agency shall inform FDA, at the address given in paragraph (a)(1) of this section, of its intent to seek renewal.

(2) FDA will notify the issuing agency of the relevant information, materials, and supporting documentation that we will require the issuing agency to submit as part of the renewal procedure. We will tailor these requirements to reflect our experience with the issuing agency during the current and any prior period of accreditation. We will limit our request to the types of the information required by paragraph (a)(3) of this section, and we will require less information if experience shows that we need only a subset of that information.

(3) At least 6 months before the date of expiration of its accreditation, an issuing agency shall furnish to FDA, at the email address we provide, a copy of a renewal application containing the information, materials, and supporting documentation requested by FDA in accordance with paragraph (b)(2) of this section.

(4) Any issuing agency that does not plan to renew its accreditation shall so notify FDA at the address given in paragraph (a)(1) of this section at least 9 months before the expiration of the issuing agency's term of accreditation and shall include a description of its plans for allowing continued use of unique device identifiers issued prior to the expiration of the current term of accreditation.

(c) *FDA action on an application for initial or renewal accreditation.* (1) FDA will conduct a review and evaluation to determine whether the applicant meets the requirements of this subpart and whether the UDI system proposed by the applicant will meet the requirements of this subpart.

(2) Within 60 days of receipt of an application for accreditation, FDA will notify the applicant of any deficiencies in its application and will request correction of those deficiencies within 60 days. The applicant may request an extension if it needs additional time to correct deficiencies in its application. If the deficiencies are not resolved to FDA's satisfaction within the specified time period, the application for accreditation as an issuing agency may be denied.

(3) FDA shall notify the applicant whether the application for accreditation has been granted or denied. That notification shall list any conditions of approval or state the reasons for denial.

(4) If FDA denies an application, we will advise the applicant of the circumstances under which a denied application may be resubmitted.

(5) If FDA does not reach a final decision on a renewal application before the expiration of an issuing agency's current accreditation, the approval will be deemed extended until FDA reaches a final decision on the application.

(d) *Relinquishment of accreditation.* If an issuing agency decides to relinquish its accreditation before expiration of the current term of accreditation, it shall submit a letter of such intent to FDA, at the address provided in paragraph (a)(1) of this section, at least 9 months before relinquishing its accreditation.

(e) *Notice of termination of accreditation.* An issuing agency that does not apply for renewal of its accreditation, is denied renewal of accreditation by FDA, or relinquishes its accreditation and duties before expiration of the current term of accreditation, shall notify all labelers that are using the issuing agency's UDI system, in a manner and time period approved by FDA, of the date that the issuing agency will cease to serve as an FDA-accredited issuing agency.

(f) *Term of accreditation.* The initial term of accreditation for an issuing agency shall be for a period of 3 years. An issuing agency's term of accreditation may be periodically renewed for a period of 7 years.

§ 830.120 Responsibilities of an FDA-accredited issuing agency.

To maintain its accreditation, an issuing agency must:

(a) Operate a system for assignment of unique device identifiers that meets the requirements of § 830.20 and the standards incorporated by reference at § 830.10;

(b) Make available information concerning its system for the assignment of unique device identifiers;

(c) Maintain a list of labelers that use its system for the assignment of unique device identifiers and provide FDA a copy of such list in electronic form by December 31 of each year;

(d) Upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of unique device identifiers; and

(e) Remain in compliance with the eligibility and accreditation criteria set forth in § 830.100.

§ 830.130 Suspension or revocation of the accreditation of an issuing agency.

FDA may suspend or revoke the accreditation of an issuing agency if FDA finds, after providing the issuing agency with notice and opportunity for an informal hearing in accordance with part 16 of this chapter, that the issuing agency or any employee of the issuing Agency:

(a) Has been guilty of misrepresentation in obtaining accreditation;

(b) Has failed to fulfill the responsibilities outlined in § 830.120; or

(c) Has violated or aided and abetted in the violation of any regulation issued under section 510(e) or section 519(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(e) and 21 U.S.C. 360i(f), respectively).

Subpart D—FDA as an Issuing Agency

§ 830.200 When FDA will act as an issuing agency.

(a) During any period where there is no accredited issuing agency, FDA will act as an issuing agency.

(b) If FDA determines that a significant number of small businesses would be substantially and adversely affected by the fees required by all accredited issuing agencies, FDA will act as an issuing agency.

(c) FDA may, in its discretion, act as an issuing agency if we determine it is necessary for us to do so to ensure the continuity or the effectiveness of the system for the identification of medical devices.

(d) FDA may, in its discretion, act as an issuing agency if we determine it is appropriate for us to do so in order to facilitate or implement an alternative granted under § 801.35 of this chapter.

§ 830.210 Eligibility for use of FDA as an issuing agency.

When FDA acts as an issuing agency, any labeler will be permitted to use FDA's unique device identification system, regardless of whether the labeler is considered a small business.

§ 830.220 Termination of FDA service as an issuing agency.

(a) FDA may end our services as an issuing agency if we determine that the conditions that prompted us to act no longer exist and that ending our services would not be likely to lead to a return of the conditions that prompted us to act.

(b) If FDA has ended our services as an issuing agency, a labeler may continue to use a device identifier assigned under FDA's unique device identification system until such time as § 830.50 requires the use of a new device identifier.

Subpart E—Global Unique Device Identification Database

§ 830.300 Devices subject to device identification data submission requirements.

(a) *In general.* The labeler of a device must provide the information required by this subpart for each version or model required to be labeled with a unique device identifier.

(b) *Exception.* The labeler is not required to submit information concerning any device whose label is not required to bear a unique device identifier (UDI) because the device is subject to a labeling exception under § 801.30, § 801.35, or § 801.128(f)(2) of this chapter, regardless of whether the labeler voluntarily includes a UDI on the label of the device.

(c) *Voluntary submission of information.* If a labeler voluntarily includes a UDI on the label of a device under § 801.40, or, for devices sold at retail, the label includes a Universal Product Code (UPC), the labeler may also voluntarily submit information concerning that device under this part.

(d) *Exclusions.* FDA may reject or remove any device identification data where:

(1) The device identifier submitted does not conform to § 830.20;

(2) The information concerns a device that is neither manufactured in the United States nor in interstate commerce in the United States,

(3) The information concerns a product that FDA determines is not a device or a combination product that includes a device constituent part,

(4) The information concerns a device or a combination product that requires, but does not have, FDA premarket approval or clearance;

(5) A device that FDA has banned under section 516 of the Federal Food, Drug, and Cosmetic Act; or

(6) FDA has suspended the accreditation of the issuing agency that operates the system used by the labeler.

§ 830.310 Information required for unique device identification.

The contact for device identification shall provide FDA with the following information concerning each version or model of a device required to be labeled with a unique device identifier (UDI):

(a) *Concerning the labeler:*

(1) The name of the labeler;

(2) A telephone number or email address that will allow FDA to communicate with the contact for device identification designated under § 830.320(a); and

(3) The name of each issuing agency whose system is used by the labeler to assign unique device identifiers used by the labeler.

(b) *Concerning each version or model of a device labeled with a UDI:*

(1) The device identifier portion of the unique device identifier assigned to the version or model;

(2) When reporting a substitution of a new device identifier that will be used in lieu of a previously-reported identifier, the device identifier that was previously assigned to the version or model;

(3) If § 801.50 of this chapter requires the device to bear a UDI as a permanent marking on the device itself, either:

(i) A statement that the device identifier that appears as a permanent marking on the device is identical to that reported under paragraph (b)(1) of this section, or

(ii) The device identifier portion of the unique device identifier that appears as a permanent marking on the device;

(4) The proprietary, trade, or brand name of the device as it appears on the label of the device;

(5) Any version or model number or similar reference that appears on the label of the device;

(6) If the device is labeled as sterile, a statement to that effect;

(7) If the device is labeled as containing natural rubber latex that contacts humans, or is labeled as having packaging containing natural rubber latex that contacts humans, as described by §§ 801.437(b)(1), 801.437(b)(3), and 801.437(f) of this chapter, a statement to that effect;

(8) If the device is available in more than one size, the size of the particular version or model, together with the unit of measure, as it appears on the label of the device;

(9) The type of production identifiers that appear on the label of the device;

(10) The FDA premarket submission number of a cleared or approved device,

or a statement that FDA has by regulation exempted the device from premarket notification;

(11) The FDA listing number assigned to the device;

(12) The Global Medical Device Nomenclature (GMDN) code for the device;

(13) The total number of individual devices contained in the device package.

§ 830.320 Submission of unique device identification information.

(a) *Designation of contact for device identification.* Each labeler must designate an individual to serve as the point of contact with FDA on matters relating to the identification of medical devices marketed by the labeler. The contact for device information is responsible for ensuring FDA is provided with all information required by this part. The contact for device information may authorize an issuing agency or any other person to provide information to FDA on behalf of the labeler.

(b) *Information shall be submitted via electronic means.* All information required by this subpart shall be submitted electronically to FDA's Global Unique Device Identification Database (GUDID) in a format that we can process, review, and archive, unless the labeler has obtained a waiver from electronic submission of unique device identifier (UDI) data.

(c) *Waiver from electronic submission.* (1) A labeler may request a waiver from electronic submission of UDI data by submitting a letter addressed to the appropriate Center Director explaining why electronic submission is not technologically feasible; send the letter to: Division of Small Manufacturers, Consumer, and International Assistance (DSMICA), Center for Devices and Radiological Health, White Oak Bldg. 66, rm. 4621, 10903 New Hampshire Ave., Silver Spring, MD 20993.

(2) If the establishment where the labeler is located has obtained a waiver from electronic submission of registration and listing information under section 510(p) of the Federal Food, Drug, and Cosmetic Act, the labeler is deemed to have a waiver from electronic submission of UDI data.

(3) A labeler that has a waiver from electronic submission of UDI data must send a letter containing all of the information required by § 830.310, as well as any ancillary information permitted to be submitted under § 830.340 that the labeler wishes to submit, within the time permitted by § 830.330, addressed to: Division of Small Manufacturers, Consumer, and International Assistance (DSMICA), Center for Devices and Radiological Health, White Oak Bldg. 66, rm. 4621, 10903 New Hampshire Ave., Silver Spring, MD 20993.

§ 830.330 Times for submission of unique device identification information.

(a) The labeler shall submit to FDA the information required by § 830.310 no later than the date the label of the device must bear a unique device identifier under § 801.20 of this chapter.

(b) The labeler of a device shall submit to FDA an update to the information required by § 830.310 whenever the information changes. The updated information must be submitted no later than the date a device is first labeled with the changed information. If the information does not appear on the label of a device, the updated information must be submitted within 10 business days of the change.

§ 830.340 Voluntary submission of ancillary device identification information.

(a) You may not submit any information to the Global Unique Device Identification Database (GUDID) other than that specified by § 830.310, except where FDA acts to permit the submission of specified additional types of information, termed ancillary information.

(b) FDA will provide information through the FDA Web site at *http://www.fda.gov/udi* concerning the types of ancillary information that may be submitted to the GUDID.

(c) FDA may periodically change the types of ancillary information that may be submitted to the GUDID. We will seek comment on any proposed change in accordance with the Paperwork Reduction Act and on the FDA Web site at *http://www.fda.gov/udi* at least 60 days before making the change.

§ 830.350 Records to be maintained by the labeler.

(a) Each labeler shall retain, and submit to FDA upon specific request, records showing all unique device identifiers (UDIs) used to identify devices that must be labeled with a UDI, and the particular version or model associated with each device identifier. These records must be retained for 3 years from the date the labeler ceases to market the version or model.

(b) Compliance with this section does not relieve the labeler of the need to comply with recordkeeping requirements of any other FDA regulation.

Dated: July 2, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–16621 Filed 7–3–12; 4:15 pm]

BILLING CODE 4160–01–P

Reader Aids

Federal Register

Vol. 77, No. 132

Tuesday, July 10, 2012

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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, JULY

39143–39384 2
39385–39616 3
39617–39894 5
39895–40248 6
40249–40458 9
40459–40778 10

CFR PARTS AFFECTED DURING JULY

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.

3 CFR

Proclamations:
8840 39885
Administrative Orders:
Presidential Determinations:
No. 2012–10 of June 25, 2012 39615

5 CFR

2634 39143

7 CFR

2 40249
520 40249
915 39150
930 40250
3560 40253
Proposed Rules:
925 39184
1220 40529

9 CFR

417 39895

10 CFR

Ch. I 39899
2 39385
171 39385
Proposed Rules:
2 39442
171 39442
430 40530

12 CFR

614 39387
1005 40459
1070 39617

14 CFR

1 .....39388, 40478
25 40255
33 39623
39 .....39153, 39156, 39157, 39159, 39624, 40479, 40481, 40485
67 39389
71 .....40488, 40489, 40490, 40492
93 39911
129 40493
Proposed Rules:
Ch. 1 40310
39 .....39186, 39188, 39444, 39446, 40307
71 .....39651, 39652, 39653
120 39194
121 39654
382 39800

15 CFR

734 39354
738 39354
740 .....39354, 40493
742 .....39354, 40493
743 39354
744 39354
746 39354
748 .....39354, 40258, 40493
750 40493
752 .....39354, 40493
760 40493
770 39354
772 39354
774 .....39162, 39354

16 CFR

Proposed Rules:
23 39201

17 CFR

1 39626
229 39380
240 .....39380, 39626

18 CFR

Proposed Rules:
35 .....39447, 40414
37 40414
40 39858
101 40414

19 CFR

Proposed Rules:
351 40534

21 CFR

74 39921
522 39380
556 39380
870 39924
Proposed Rules:
16 40736
801 40736
803 40736
806 40736
810 40736
814 40736
820 40736
821 40736
822 40736
830 40736
890 39953

22 CFR

126 39392

24 CFR

Proposed Rules:
232 40310
Ch. IX 39452

26 CFR

Proposed Rules:
1 .....39452, 39655

28 CFR

Proposed Rules:
16 40539

29 CFR

1983 40494

32 CFR

239 39627
706 39629
2003 40261
Proposed Rules:
199 39655

33 CFR

100 ....39393, 39395, 39398, 39630, 39632, 39633
117 ....40265, 40266, 40509
147 39164
165 ....39169, 39170, 39172, 39174, 39398, 39402, 39404, 39406, 39408, 39411, 39413, 39413, 39418, 39420, 39422, 39633, 39638, 40266, 40509, 40511, 40513, 40515, 40518, 40521
Proposed Rules:
100 39453
165 ....39453, 40541, 40544

36 CFR

4 39927
294 39576
Proposed Rules:
7 40547
1195 39656

37 CFR

202 40268

38 CFR

3 ....40524, 40525

39 CFR

111 40527

40 CFR

52 ....39177, 39180, 39181, 39425, 39938, 39943, 40150
131 39949
141 39182
142 39182
171 39640
180 40271
Proposed Rules:
50 ....39205, 39959
51 ....39205, 39959
52 ....39205, 39456, 39458, 39657, 39659, 40315, 40317, 40550
53 39205
58 39205
180 39962
300 40318

44 CFR

64 39642

47 CFR

54 39435
73 ....39439, 40276
76 40276
Proposed Rules:
15 39206

48 CFR

1002 40302
1032 40302
1052 40302
Proposed Rules:
15 40552

49 CFR

Proposed Rules:
171 39662
173 39662
178 39662
571 39206

50 CFR

622 39647
635 39648
648 40527
679 ....39183, 39440, 39441, 39649, 40305
Proposed Rules:
17 ....39666, 39670, 39965, 40172, 40222, 40706
20 39983
300 40553
600 39459
622 ....39460, 40561

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 4348/P.L. 112–141

Moving Ahead for Progress in the 21st Century Act (July 6, 2012; 126 Stat. 405)

Last List July 5, 2012

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.